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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV02–916–1 FIR]

Nectarines and Peaches Grown in California; Revision of Handling Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture is adopting, with changes, an interim final rule which revised the handling requirements for California nectarines and peaches by modifying the grade, size, maturity, container, container marking, and pack requirements for fresh shipments of these fruits, beginning with 2002 season shipments. This rule also continues in effect a modification of the requirements for placement of Federal-State Inspection Service lot stamps for the 2002 season only, a new standard container, and weight-count standards for Peento type peaches. The marketing orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative and Peach Commodity Committees (committees). This rule enables handlers to continue shipping fresh nectarines and peaches meeting consumer needs in the interests of producers, handlers, and consumers of these fruits.

EFFECTIVE DATE: September 16, 2002.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California, 93721; telephone (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491; Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement Nos. 124 and 85, and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the ''orders.'' The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Under the orders, lot stamping, grade, size, maturity, container, container marking, and pack requirements are established for fresh shipments of California nectarines and peaches. Such requirements are in effect on a continuing basis. The Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC), which are responsible for local administration of the orders, met on November 29, 2001, and unanimously recommended that these handling requirements be revised for the 2002 season, which began on April 15. The changes: (1) Continue the lot stamping requirements which were in effect for the 2000 and 2001 seasons; (2) authorize shipments of ''CA Utility'' quality fruit to continue during the 2002 season; (3) establish weight-count standards for the Peento type peaches; (4) require shippers' names and addresses on all containers; (5) add the Euro five-down returnable plastic container as a standard container, establish a net weight for the container, and exempt the container from the ''well-filled'' requirement; and (6) revise varietal maturity, quality, and size requirements to reflect changes in growing and marketing practices. These changes continue in effect.

The committees meet prior to and during each season to review the rules and regulations effective on a continuing basis for California nectarines and peaches under the orders. Committee meetings are open to the public and interested persons are encouraged to express their views at these meetings. USDA reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

No official crop estimate was available at the time of the committees' meetings because the nectarine and peach trees were dormant. The committees adopted crop estimates at their May 1, 2002, meetings. They estimated that 2002 production would total about 23,248,000 containers of nectarines and 23,121,000 containers of peaches. Containers are equivalent to 25 pounds of fruit. This is similar in size to the 2001 crop, which totaled

20,951,000 containers of nectarines, and 21,408,000 containers of peaches.

Lot Stamping Requirements

Sections 916.55 and 917.45 of the orders require inspection and certification of nectarines and peaches, respectively, handled by handlers. Sections 916.115 and 917.150 of the nectarine and peach orders' rules and regulations, respectively, require that all exposed or outside containers of nectarines and peaches, and at least 75 percent of the total containers on a pallet, be stamped with the Federal-State Inspection Service (inspection service) lot stamp number after inspection and before shipment to show that the fruit has been inspected. These requirements apply except for containers that are loaded directly onto railway cars, exempted, or mailed directly to consumers in consumer packages.

Lot stamp numbers are assigned to each handler by the inspection service, and are used to identify the handler and the date on which the container was packed. The lot stamp number is also used by the inspection service to identify and locate the inspector's corresponding working papers or field notes. Working papers are the documents each inspector completes while performing an inspection on a lot of nectarines or peaches. Information contained in the working papers supports the grade levels certified to by the inspector at the time of the inspection.

The lot stamp number has value for the industries, as well. The committees utilize the lot stamp number and date codes to trace fruit in the container back to the orchard where it was harvested. This information is essential in providing quick information for a crisis management program instituted by the industries. Without the lot stamp information on each container, the ''trace back'' effort, as it is called, would be jeopardized.

Over the last few years, several new containers have been introduced for use by nectarine and peach handlers. These containers are returnable plastic containers (RPCs). Use of RPCs may represent substantial savings to retailers for storage and disposal, as well as for handlers who do not have to pay for traditional, single-use, containers. Fruit is packed in the containers by the handler, delivered to the retailer, emptied, and returned to a central clearinghouse for cleaning and redistribution to the handler. However, because these containers are designed for reuse, RPCs do not support markings that are permanently affixed to the container. All markings must be printed on cards that slip into tabs on the front or sides of the containers. The cards are easily inserted and removed, and further contribute to the efficient reuse of RPCs.

The cards are a concern for the inspection service and the industries because of their unique portability. There is some concern that the cards on pallets of inspected containers could easily be moved to pallets of uninspected containers, thus permitting a handler to avoid inspection on a lot or lots of nectarines or peaches. This would also jeopardize the use of the lot stamp numbers for the industries' ''trace back'' program.

To address this concern for the 2000 and 2001 seasons, the committees recommended that pallets of inspected fruit in RPCs be identified with a USDA-approved pallet tag containing the lot stamp number, in addition to the lot stamp number printed on the card on the container. In this way, noted the committees, an audit trail would be created, confirming that the lot stamp number on each container on the pallet corresponds to the lot stamp number on the pallet tag.

The committees and the inspection service presented their concerns to the manufacturers of these types of containers prior to the 2000 season. At that time, one manufacturer indicated a willingness to address the problem by offering an area on the principal display panel where the container markings would adhere to the container. Another possible improvement discussed was for an adhesive for the current style of containers which would securely hold the cards with the lot stamp numbers, yet would be easy for the clearinghouse to remove when the containers are washed. However, the changes were not in effect for the 2000 and 2001 seasons, but were anticipated to be in effect for the 2002 season.

In a meeting of the Returnable Plastic Container Task Force on November 15, 2001, it was determined that given the different styles and configurations of RPCs available, having a standardized display panel or a satisfactory adhesive for placement of the cards may not be realistic.

For those reasons, the task force recommended to the committees that the regulation in effect for the 2000 and 2001 seasons requiring lot stamp numbers on USDA-approved pallet tags, as well as on individual containers on a pallet, be again required for the 2002 season. The committees, in turn, recommended unanimously that such requirement be extended for the 2002 season, as well.

Thus, §§ 916.115 and 917.150, as amended, continue in effect the requirement that the lot stamp number be printed on a USDA-approved pallet tag, in addition to the requirement that the lot stamp number be applied to cards on all exposed or outside containers, and not less than 75 percent of the total containers on a pallet, during the 2002 season.

Container and Pack Requirements

Sections 916.52 and 917.41 of the orders authorize establishment of container, pack, and marking requirements for shipments of nectarines and peaches, respectively. Under this rule, the revisions of the well-filled requirements, container marking requirements, and list of standard containers continue in effect in accordance with the recommendations of the NAC and PCC.

Well-Filled Requirements

Under paragraphs (a)(1) of §§ 916.350 and 917.442, all containers of nectarines and peaches, respectively, are required to conform to the requirements of standard pack, and volume-filled containers are further required to be ''well-filled.'' ''Well-filled'' means that nectarines and peaches in any volume-filled container must be filled to within one inch of the top of the container.

With the addition of the RPCs, handlers are frequently unable to well fill those containers without either damaging the fruit inside or making the container too heavy. For this reason, applying the requirements of ''well-filled'' to this container is impractical.

The Returnable Plastic Container Task Force discussed this issue at their meeting on November 15, 2001, and unanimously agreed that the requirement for the Euro five down box to meet the well-filled requirement was difficult for handlers utilizing that RPC, and such requirement should not be applied to that container.

For those reasons, the revisions to paragraphs (a)(1) of §§ 916.350 and 917.442 continue in effect the specification that the Euro five down box is not required to meet the well-filled requirement.

Container Marking Requirements

Sections 916.350 and 917.442 establish certain requirements for marking containers of nectarines and peaches, respectively. This rule continues in effect provisions requiring all containers of nectarines and peaches to be marked with the name and address of the shipper. Previously, all containers had to be marked with this information,

except for consumer containers mailed directly to consumers.

Requiring the handler to print his or her name and address on each container will ensure that all boxes are properly identified for handler responsibility. Such proper identification will also assist the industry's trace back program by providing additional information for beginning the trace.

The Returnable Plastic Container Task Force discussed this issue at its meeting on November 15, 2001, and unanimously voted to recommend to the NAC and PCC that the requirement for the name and address of the shipper be extended to all types of containers. When the committees met on November 29, 2001, they unanimously voted to do so.

Addition of a New Standard Container

In the rules and regulations for nectarines at § 916.350, paragraphs (a)(6), (a)(7) and (a)(8), and for peaches at § 917.442, paragraphs (a)(7), (a)(8), and (a)(9), standard containers, such as the Nos. 22D, 22E, 22G, and 32, are required to be marked with the net weight. Under paragraph (b) in §§ 916.350 and 917.442, such standard containers are defined. Once the use of a container has become common in the industry, such containers are determined to be standard containers. Standard containers represent container types that are recognized by the industry and adopted by the retail trade. As such, it is a practice of the committees to recommend that such containers be added to the list of standard containers together with container marking requirements.

At the November 29, 2001 meeting, the NAC and PCC, acting upon a recommendation from the Returnable Plastic Container Task Force, unanimously recommended that the Euro five down RPC be added to the list of standard containers and have a net weight of 31 pounds, which is to be printed on the end of the container.

Nectarines: For the reasons stated above, the redesignation of paragraph (a)(4) of § 916.350 as paragraph (a)(5), and the addition of a new paragraph (a)(4) of § 916.350 continues in effect to require all containers of nectarines to be marked with the name and address of the shipper. The markings shall be placed on one outside end of the container in plain sight and in plain letters. The redesignation of paragraphs (a)(5) and (a)(6) as paragraphs (a)(6) and (a)(7), and the addition of a new paragraph (a)(8) continues in effect the establishment of a 31-pound net weight for the Euro five down RPC. The net weight shall be marked on one outside end in plain sight and plain letters. The redesignation of paragraphs (a)(7), (a)(8), and (a)(9) as paragraphs (a)(9), (a)(10) and (a)(11) also continues in effect. In a conforming change, the redesignation of paragraph (a)(4) to paragraph (a)(5) continues in effect the correction of the reference to paragraph (a)(4)(i) in former paragraph (a)(4)(ii), which currently reads ''(a)(5)(i).''

Peaches: For the reasons stated above, the redesignation of paragraph (a)(4) of § 917.442 as paragraph (a)(5) continues in effect, and the addition of a new paragraph (a)(4) of § 917.442 continues in effect to require all containers of peaches to be marked with the name and address of the shipper. The markings shall appear on one outside end of the container in plain sight and plain letters. The redesignation of paragraphs (a)(5), (a)(6), and (a)(7) as paragraphs (a)(6), (a)(7), and (a)(8) also continues in effect. New paragraph (a)(9) continues in effect the establishment of a net weight of 31-pounds for the Euro five down RPC. The net weight shall appear on one outside end of the container in plain sight and plain letters. The redesignation of paragraphs (a)(8), (a)(9), and (a)(10) as paragraphs (a)(10), (a)(11), and (a)(12) similarly continue in effect. In a conforming change, the redesignation of paragraph (a)(4) to paragraph (a)(5) continues in effect the correction of the reference to paragraph (a)(4)(i) in former paragraph (a)(4)(ii), which currently reads ''(a)(5)(i).''

In addition, the revision of paragraph (b) of §§ 916.350 and 917.442 continues in effect to add the Euro five down container to the list of standard containers. The California Department of Food and Agriculture is expected to assign this container a number, like the 22D or 32 nectarine and peach containers, once the container is added to the California Agricultural Code. At that time, the common name currently used, Euro five down, will be replaced by the assigned number.

Weight-Count Standards for Peaches

Under the requirements of § 917.41 of the order, containers of peaches are required to meet weight-count standards for a maximum number of peaches in a 16-pound sample when such peaches, which may be packed in tray-packed containers, are converted to volume-filled containers. Under § 917.442 of the order's rules and regulations, weight-count standards are established for all varieties of peaches as TABLES 1 and 2 of paragraph (a)(5)(iv).

According to the PCC, the Peento varieties of peaches have traditionally been packed in trays because they have been marketed as a premium variety, which justified the added packing costs.

However, as the volume has increased, the value of the variety has diminished in the marketplace, and some handlers converted their tray-packed containers of Peento varieties to volume-filled containers. Originally, weight-count standards were established for round peaches and nectarines. Peento type peaches are shaped like donuts, and those weight-count standards are inappropriate. In an effort to standardize the conversion from tray-packing to volume-filling for Peento type peaches, the committee staff conducted weigh-count surveys during the 2001 season to determine the most optimum weight-counts for the varieties at varying fruit sizes.

As a result, the staff prepared a new weight-count table applicable to only the Peento varieties. The Grade and Size Subcommittee reviewed the weight-counts at their November 15, 2001, meeting and recommended to the PCC that they be implemented for the 2002 season.

The committee staff will continue to conduct further weight-count surveys to ensure that the Peento varieties, which are packed in volume-filled containers, meet the weight-count standards established for tray-packed fruit.

For those reasons, the addition of a new Table 3 to paragraph (a)(5)(iv) of § 917.442, following Tables 1 and 2 continues in effect. The revised titles of the Tables 1 and 2 continue in effect by adding the words ''(except Peento variety peaches)'' between the words ''peaches'' and ''packed.''

In addition, a correction was published in the **Federal Register** on May 29, 2002 (67 FR 37319), to exempt Peento type peaches from the weight-count standards for round varieties of peaches, given that such weight counts are not applicable to Peento type peaches. This language ensures that the newly-developed standards outlined in Table 3 of paragraph (a)(5)(iv) are the sole basis for the weight-count sampling of Peento type peaches. This rule also continues in effect that correction.

Grade and Quality Requirements

Sections 916.52 and 917.41 of the orders authorize the establishment of grade and quality requirements for nectarines and peaches, respectively. Prior to the 1996 season, § 916.356 required nectarines to meet a modified U.S. No. 1 grade. Specifically, nectarines were required to meet U.S. No. 1 grade requirements, except for a slightly tighter requirement for scarring and a more liberal allowance for misshapen fruit. Prior to the 1996

season, § 917.459 required peaches to meet the requirements of a U.S. No. 1 grade, except for a more liberal allowance for open sutures that were not ''serious damage.''

This rule continues in effect the revisions to §§ 916.350, 916.356, 917.442, and 917.459 to permit shipments of nectarines and peaches meeting ''CA Utility'' quality requirements during the 2002 season. (''CA Utility'' fruit is lower in quality than that meeting the modified U.S. No. 1 grade requirements.) Shipments of nectarines and peaches meeting ''CA Utility'' quality requirements have been permitted each season since 1996.

Studies conducted by the NAC and PCC in 1996 indicated that some consumers, retailers, and foreign importers found the lower-quality fruit acceptable in some markets. When shipments of ''CA Utility'' nectarines were first permitted in 1996, they represented 1.1 percent of all nectarine shipments, or approximately 210,000 containers. Shipments of ''CA Utility'' nectarines reached a high of 5 percent (1,131,000 containers) during the 2001 season, but usually represent approximately 4 percent of total nectarine shipments. Shipments of ''CA Utility'' peaches totaled 1.9 percent of all peach shipments, or approximately 366,000 containers, during the 1996 season. Shipments of ''CA Utility'' peaches reached a high of 5 percent of all peach shipments (1,031,000 containers) during the 2001 season, but usually represent approximately 4 percent of total peach shipments.

Handlers have also commented that the availability of ''CA Utility'' lends flexibility to their packing operations. They have noted that they now have the opportunity to remove marginal nectarines and peaches from their U.S. No. 1 containers and place this fruit in containers of ''CA Utility.'' This flexibility, the handlers note, results in better quality U.S. No. 1 packs without sacrificing fruit.

The Grade and Size Subcommittee met on November 15 and did not make a recommendation to the NAC and PCC to continue shipments of ''CA Utility'' quality nectarines and peaches. Several subcommittee members raised a number of concerns about ''CA Utility'' quality fruit, including that the fruit is not reaching its intended low income consumer markets and that there are reduced returns to growers on ''CA Utility'' quality fruit. The authorized tolerance of 40 percent U.S. No. 1 fruit in each container of ''CA Utility'' quality was raised, and a suggestion was made that the tolerance should be eliminated so that no U.S. No. 1 fruit would be in a box.

At the full committee meeting, committee staff discussed the benefits of having a ''CA Utility'' quality for nectarines and peaches. Such benefits included improved quality of packed fruit, improved compliance of marketing order requirements, and increased assessments. Further, elimination of the tolerances for U.S. No. 1 fruit in each container of ''CA Utility'' quality fruit was discussed. It was noted that this would likely result in higher inspection costs to handlers.

Accordingly, based upon the recommendations, the revisions to paragraph (d) of §§ 916.350 and 917.442, and paragraph (a)(1) of §§ 916.356 and 917.459 continue in effect to permit shipments of nectarines and peaches meeting ''CA Utility'' quality requirements during the 2002 season, on the same basis as the 2000 and 2001 seasons.

Maturity Requirements

In §§ 916.52 and 917.41, authority is provided to establish maturity requirements for nectarines and peaches, respectively. The minimum maturity level currently specified for nectarines and peaches is ''mature'' as defined in the standards. For most varieties, ''well-matured'' determinations for nectarines and peaches are made using maturity guides (*e.g.*, color chips). These maturity guides are reviewed each year by the Shipping Point Inspection Service (SPI) to determine whether they need to be changed, based upon the most-recent information available on the individual characteristics of each nectarine and peach variety.

These maturity guides established under the handling regulations of the California tree fruit marketing orders have been codified in the Code of Federal Regulations as TABLE 1 in §§ 916.356 and 917.459, for nectarines and peaches, respectively.

The requirements in the 2002 handling regulations are the same as those that appeared in the 2001 handling regulations with a few exceptions. Those exceptions are explained in this rule.

Nectarines: Requirements for ''well-matured'' nectarines are specified in § 916.356 of the order's rules and regulations. This rule continues in effect the revision to TABLE 1 of paragraph (a)(1)(iv) of § 916.356 to add maturity guides for ten varieties of nectarines. Specifically, SPI recommended adding maturity guides for the Fire Sweet, Honey Blaze, Ruby Sweet, September Free, and Spring Sweet varieties to be regulated at the J maturity guide; and the Flame Glo, Gran Sun, Prima Diamond XIII, Red Jewel, and Spring Ray to be regulated at the L maturity guide.

The NAC recommended these maturity guide requirements based on SPI's continuing review of individual maturity characteristics and identification of the appropriate maturity guide corresponding to the ''well-matured'' level of maturity for nectarine varieties in production.

Peaches: Requirements for ''well-matured'' peaches are specified in § 917.459 of the order's rules and regulations. This rule continues in effect the revision of TABLE 1 of paragraph (a)(1)(iv) of § 917.459 to add maturity guides for eleven varieties of peaches. Specifically, SPI recommended adding maturity guides for the Spring Delight variety to be regulated at the G maturity guide; the Super Rich variety to be regulated at the H maturity guide; the 60EF32 variety to be regulated at the I maturity guide; the Brittney Lane, Joanna Sweet, Madonna Sun, Morning Lord, Sweet Dream, Sweet Gem, and Sweet Mick varieties to be regulated at the J maturity guide; and the Sprague Last Chance variety to be regulated at the L maturity guide.

In addition, SPI requested that the Sugar Lady variety of peaches be removed from the maturity guide listing in TABLE 1 of paragraph (a)(1)(iv) of § 917.459. This rule continues in effect that removal. According to SPI, white-fleshed peaches and nectarines would be more accurately assessed by other criteria, including cutting the fruit. The committees unanimously recommended such a change at their meetings.

The Joanna Sweet peach variety was also recommended to have a one hundred percent surface color requirement for meeting the assigned color chip rather than the current ninety percent. This recommendation is based upon SPI's experience with the maturity characteristics of this variety.

Thus, the revision of paragraph (a)(1)(iv) of § 917.459 to reflect this requirement continues in effect.

The PCC recommended these maturity guide requirements based on SPI's continuing review of individual maturity characteristics and identification of the appropriate maturity guide corresponding to the ''well-matured'' level of maturity for peach varieties in production.

Size Requirements: Both orders provide (in §§ 916.52 and 917.41) authority to establish size requirements. Size regulations encourage producers to leave fruit on the tree longer, which improves both size and maturity of the

fruit. Acceptable fruit size provides greater consumer satisfaction and promotes repeat purchases; and, therefore, increases returns to producers and handlers. In addition, increased fruit size results in increased numbers of packed containers of nectarines and peaches per acre, also a benefit to producers and handlers.

Varieties recommended for specific size regulations have been reviewed and such recommendations are based on the specific characteristics of each variety. The NAC and PCC conduct studies each season on the range of sizes attained by the regulated varieties and those varieties with the potential to become regulated, and determine whether revisions and additions to the size requirements are appropriate.

Nectarines: Section 916.356 of the order's rules and regulations specifies minimum size requirements for fresh nectarines in paragraphs (a)(2) through (a)(9). This rule continues in effect the revision to § 916.356 establishing variety-specific minimum size requirements for 13 varieties of nectarines, which were produced in commercially-significant quantities of more than 10,000 containers for the first time during the 2001 season. This rule also continues in effect the removal of the variety-specific minimum size requirements for 3 varieties of nectarines whose shipments fell below 5,000 containers during the 2001 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Arctic Ice variety of nectarines, recommended for regulation at a minimum size 80. Studies of the size ranges attained by the Arctic Ice variety revealed that 100 percent of the containers met the minimum size of 80 during the 2001 season. Sizes ranged from size 30 to size 80, with 3 percent of the packages in the 30 sizes, 47 percent of the packages in the 40 sizes, 41 percent of the packages in the 50 sizes, 5.4 percent in the 60 sizes, 3.5 percent in the 70 sizes, and .2 percent at size 80. Due to rounding, these numbers add up to slightly more than 100 percent.

A review of other varieties with the same harvesting period indicated that the Arctic Ice variety was also comparable to those varieties in its size ranges for that time period. Discussions with handlers known to handle the variety confirm this information regarding minimum size and harvesting period, as well. Thus, the recommendation to place the Arctic Ice variety in the variety-specific minimum size regulation at a minimum size 80 is appropriate.

Historical data such as this provides the NAC with the information necessary to recommend the appropriate sizes at which to regulate various nectarine varieties. In addition, producers and handlers of the varieties affected are personally invited to comment when such size recommendations are deliberated. Producer and handler comments are also considered at both NAC and subcommittee meetings when the staff receives such comments, either in writing or verbally.

For reasons similar to those discussed in the preceding paragraph, the revision of the introductory text of paragraph (a)(4) of § 916.356 to include the Prima Diamond VI and the Prince Jim 1 nectarine varieties continues in effect; and the revision of the introductory text of paragraph (a)(6) of § 916.356 to include the Arctic Ice, Bright Sweet, Grand Sweet, June Lion, Kay Pearl, Prima Diamond XXVIII, Regal Red, September Bright (26P–490), Summer Jewel, Sun Valley Sweet, and Sweet White nectarine varieties continues in effect.

This rule also continues in effect the revision of the introductory text of paragraphs (a)(4) and (a)(6) of § 916.356 to remove 3 varieties from the variety-specific minimum size requirements specified in these paragraphs because less than 5,000 containers of each of these varieties were produced during the 2001 season. Specifically, the revision of the introductory text of paragraph (a)(4) of § 916.356 to remove the Arctic Glo nectarine variety continues in effect; and the revision of the introductory text of paragraph (a)(6) of § 916.356 to remove the Cole Red and Mid Glo nectarine varieties continues in effect.

Nectarine varieties removed from the nectarine variety-specific minimum size requirements become subject to the non-listed variety size requirements specified in paragraphs (a)(7), (a)(8), and (a)(9) of § 916.356.

Peaches: Section 917.459 of the order's rules and regulations specifies minimum size requirements for fresh peaches in paragraphs (a)(2) through (a)(6), and paragraphs (b) and (c). This rule continues in effect the revision of § 917.459 establishing variety-specific minimum size requirements for 19 peach varieties that were produced in commercially-significant quantities of more than 10,000 containers for the first time during the 2001 season. This rule also continues in effect the removal of the variety-specific minimum size requirements for 1 variety of peaches whose shipments fell below 5,000 containers during the 2001 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Bev's Red variety of peaches, which was recommended for regulation at a minimum size 80. Studies of the size ranges attained by the Bev's Red variety revealed that 100 percent of the containers met the minimum size of 80 during the 2001 season. The sizes ranged from the 30 sizes to the 80 sizes, with 3.4 percent of the containers meeting the 30 sizes, 15.9 meeting the 40 sizes, 53.8 percent meeting the 50 sizes, 20.4 percent meeting the 60 sizes, 5.5 percent meeting the 70 sizes, and 1.1 percent meeting the size 80.

A review of other varieties with the same harvesting period indicated that the Bev's Red variety was also comparable to those varieties in its size ranges for that time period. Discussions with handlers known to handle the variety confirm this information regarding minimum size and harvesting period, as well. Thus, the recommendation to place the Bev's Red variety in the variety-specific minimum size regulation at a minimum size 80 is appropriate.

Historical data such as this provides the PCC with the information necessary to recommend the appropriate sizes at which to regulate various peach varieties. In addition, producers and handlers of the varieties affected are personally invited to comment when such size recommendations are deliberated. Producer and handler comments are also considered at both PCC and subcommittee meetings when the staff receives such comments, either in writing or verbally.

For reasons similar to those discussed in the preceding paragraph, the revision of the introductory text of paragraph (a)(2) of § 917.459 to include the 91002 peach variety continues in effect; the revision of the introductory text of paragraph (a)(3) of § 917.459 to include the Snow Kist peach variety continues in effect; the revision of the introductory text of paragraph (a)(5) of § 917.459 to include the Bev's Red, May Sweet, and Sunlit Snow (172LE81) peach varieties continues in effect; and the revision of the introductory text of paragraph (a)(6) of § 917.459 to include the Flaming Dragon, Jillie White, Joanna Sweet, July Flame, Prima Peach XXV, Prima Peach XXVII, Princess Gayle, Red Sun, September Flame, Snow Fall, Snow Gem, Spring Gem, Sweet Gem, and 24-SB peach varieties continues in effect.

This rule also continues in effect the revision of the introductory text of

paragraph (a)(6) of § 917.459 removing the Carnival peach variety from the variety-specific minimum size requirements specified in the section because less than 5,000 containers of this variety were produced during the 2001 season.

Peach varieties removed from the peach variety-specific minimum size requirements become subject to the non-listed variety size requirements specified in paragraphs (b) and (c) § 917.459.

This rule also continues in effect the correction of the spelling of the peach variety ''Brittney Lane,'' incorrectly spelled as ''Brittany Lane'' in paragraph (a)(5) of § 917.459.

The NAC and PCC recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these nectarine and peach varieties, and the consumer acceptance levels for various fruit sizes. This rule continues in effect the established minimum size requirements for fresh nectarines and peaches consistent with expected crop and market conditions.

This rule reflects the committees' and USDA's appraisal of the need to revise the handling requirements for California nectarines and peaches, as specified. USDA believes that this rule will have a beneficial impact on producers, handlers, and consumers of fresh California nectarines and peaches.

This rule continues in effect the establishment of handling requirements for fresh California nectarines and peaches consistent with expected crop and market conditions, and will help ensure that all shipments of these fruits made each season will meet acceptable handling requirements established under each of these orders. This rule will also help the California nectarine and peach industries provide fruit desired by consumers. This rule continues in effect the establishment and maintenance of orderly marketing conditions for these fruits in the interests of producers, handlers, and consumers.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural service firms, which include handlers, are defined by the Small Business Administration [13 CFR 121.201] as those whose annual receipts are less than $5,000,000. Small agricultural producers are defined by the Small Business Administration as those having annual receipts of less than $750,000. A majority of these handlers and producers may be classified as small entities.

The committees' staff has estimated that there are less than 20 handlers in the industry who could be defined as other than small entities. In the 2001 season, the average handler price received was $9.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 556,000 containers to have annual receipts of $5,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2001 season, the committees' staff estimates that small handlers represent approximately 94 percent of all the handlers within the industry.

The committees' staff has also estimated that more than 80 percent of the producers in the industry could be defined as small entities. In the 2001 season, the average producer price received was $5.50 per container or container equivalent for nectarines, and $5.25 per container or container equivalent for peaches. A producer would have to produce at least 136,364 containers of nectarines and 142,858 containers of peaches to have annual receipts of $750,000. Given data maintained by the committees' staff and the average producer price received during the 2001 season, the committees' staff estimates that small producers represent more than 80 percent of the producers within the industry.

Under §§ 916.52 and 917.41 of the orders, grade, size, maturity, container, container marking, and pack requirements are established for fresh shipments of California nectarines and peaches, respectively. Such requirements are in effect on a continuing basis. The NAC and PCC met on November 29, 2001, and unanimously recommended that these handling requirements be revised for the 2002 season. These recommendations had been presented to the committees by various subcommittees, each charged with review and discussion of the changes. The changes: (1) Continue the lot stamping requirements which were in effect for the 2000 and 2001 seasons; (2) authorize shipments of ''CA Utility'' quality fruit to continue during the 2002 season; (3) establish weight-count standards for Peento type peaches; (4) require shippers' names and addresses on all containers; (5) add the Euro five-down returnable plastic container as a standard container, establish a net weight for that container, and exempt that container from the ''well-filled'' requirement; and (6) revise varietal maturity, quality, and size requirements to reflect changes in growing and marketing practices. These changes continue in effect.

This rule continues in effect the authority for the continuation of the lot stamping requirements for returnable plastic containers under the marketing orders' rules and regulations that were in effect for such containers during the 2001 season for nectarine and peach shipments. The modified requirements of §§ 916.115 and 917.150 mandated that the lot stamp numbers be printed on a USDA-approved pallet tag, in addition to the requirement that the lot stamp number be applied to cards on all exposed or outside containers, and not less than 75 percent of the total containers on a pallet. Continuation of such requirements for the 2002 season would help the inspection service safeguard the identity of inspected and certified containers of nectarines and peaches, and would help the industry by keeping in place the information necessary to facilitate their ''trace-back'' program.

The Returnable Plastic Container Task Force and Grade and Size Subcommittee met on November 15, 2001, and considered possible alternatives to this action. Other alternatives were rejected because it was determined that given the different styles and configurations of RPCs available, having a standardized display panel or a satisfactory adhesive for placement of the cards may not be realistic, at least for the time being.

For those reasons, the task force recommended to the committees, and the committees voted unanimously, to extend the requirement for the lot stamp number to be printed on the cards on each container and for each pallet to be marked with a USDA-approved pallet tag, also containing the lot stamp number. Such safeguards were put in place to ensure that all the containers on

each pallet had been inspected and certified in the event a card on an individual container or containers was removed, misplaced, or lost.

The Returnable Plastic Container Task Force met on November 15 to discuss issues relating to RPCs. At that time, they discussed volume filling of RPCs and its ramifications, specifically of the Euro five down container. They noted that RPCs are favored by many retailers and demanded by others, and that this particular container has become a standard container within the industry. In an effort to meet the demands and preferences for their customers, the Euro five down container has been used in increasing numbers in recent years. However, they noted, to maintain efficient packing operations, some container requirements needed to be reviewed, especially the requirement that all volume-filled RPC containers must be well filled. While the well-filled requirement may work for traditional boxes, the requirement may increase the amount of damage to fruit in RPCs or make the containers unwieldy and heavy. The task force considered leaving the requirement in place. However, given the potential for increased utilization of RPCs, and this container in particular, and the need to provide a quality product to customers, the alternative was rejected.

The Grade and Size Subcommittee met on November 15, 2001, to discuss container-marking requirements, among other things. At that time, it was noted by staff that not all containers are required to have the shipper's name and address printed on them. The subcommittee voted unanimously to recommend to the NAC and PCC that marking requirements be changed to require the shipper's name and address be placed on all containers.

Sections 916.350 and 917.442 establish certain requirements for marking containers of nectarines and peaches, respectively. This rule continues in effect provisions requiring all containers of nectarines and peaches to be marked with the name and address of the shipper. Previously, consumer packages of these fruits mailed directly to consumers did not have to be marked with that information.

Requiring the handler to print his or her name and address on each container will ensure that all boxes are properly identified for handler responsibility. Such proper identification will also assist the industry's trace back program by providing additional information for beginning the trace.

In addition, the Returnable Plastic Container Task Force also deliberated the issue of making the Euro five down container a standard container and recommending a net weight for that container. It has been the practice of the committees to study the trends in containers used by the industry. Traditionally, corrugated containers have been the shippers' container of choice. However, in recent years, the growth of RPCs has increased dramatically. In keeping with that practice, the Task Force determined that the Euro five down container has become an industry standard and may continue to be used by greater numbers of shippers. As such, any other alternative would not be viable.

Coupled with the recommendation to add the Euro five down container to the list of standard containers is the need to recommend an applicable net weight for the container. Assigning an appropriate net weight would foreclose other alternatives.

In 1996, §§ 916.350 and 917.442 were revised to permit shipments of ''CA Utility'' quality nectarines and peaches as an experiment during the 1996 season only. Such shipments have subsequently been permitted each season. Since 1996, shipments of ''CA Utility'' have ranged from 1 to 5 percent of total nectarine and peach shipments. This rule continues in effect the authority for continued shipments of ''CA Utility'' quality nectarines and peaches during the 2002 season.

The Grade and Size Subcommittee met on November 15, 2001, and considered one alternative to this action. They considered not authorizing continued shipments of ''CA Utility'' quality nectarines and peaches. The subcommittee, ultimately, did not make a recommendation to the NAC and PCC on continued shipments of ''CA Utility'' quality nectarines and peaches.

However, the NAC and PCC unanimously recommended implementation of the authority for continued shipments of ''CA Utility'' quality nectarines and peaches at their November 29, 2001, meeting. The committees voted to continue all requirements that were in effect at that time, and then individually discussed any proposed changes, such as grade and size changes. There was discussion regarding shipments of ''CA Utility'' quality nectarines and peaches, based upon information from the Grade and Size Subcommittee, but the committees voted to continue such shipments along with all other requirements in effect at that time.

Sections 916.350 and 917.442 establish container, pack, and marking requirements for shipments of nectarines and peaches, respectively. This rule continues in effect the changes to the pack and container marking requirements of the order's rules and regulations to exempt RPCs from the well-filled requirement and add the requirement that all types of containers be marked with the shipper's name and address.

Section 917.442 also establishes minimum weight-count standards for containers of peaches. Under these requirements, containers of peaches are required to meet weight-count standards for a maximum number of peaches in a 16-pound sample when such peaches are packed in a tray-packed container. That same maximum number of peaches is also applicable to volume-filled containers, based upon the tray-packed standard. In other words, the weight-count standard is developed so handlers may convert tray-packed peaches to volume-filled containers and be assured that the fruit in the volume-filled container will meet the maximum number of peaches in the 16-pound sample.

When the Grade and Size Subcommittee met on November 15, 2001, they discussed the recent changes in the packing and marketing of Peento type peaches. When these varieties were first introduced and marketed, they were generally tray-packed because they were a novel and premium product. As production has increased, the value of the varieties has diminished in the marketplace, and some handlers have converted their tray-packed containers of Peento varieties to volume-filled containers.

The staff conducted weight-count studies during the 2001 season so that weight-count standards could be developed, thus ensuring that all handlers are packing a standard maximum number of peaches in a 16-pound sample. Since weight-count standards provide a basis for volume filling of containers of other varieties of peaches, the subcommittee recommended that the NAC and PCC establish such standards for these unique varieties.

Sections 916.356 and 917.459 establish minimum maturity levels. This rule continues in effect the annual adjustments to the maturity requirements for several varieties of nectarines and peaches. Maturity requirements are based on maturity measurements generally using maturity guides (*e.g.,* color chips), as recommended by Shipping Point Inspection. Such maturity guides are reviewed annually by SPI to determine the appropriate guide for each nectarine and peach variety. These annual adjustments reflect changes in the maturity characteristics of nectarines

and peaches as experienced over the previous season's inspections. Adjustments in the guides ensure that fruit has met an acceptable level of maturity, ensuring consumer satisfaction while benefiting nectarine and peach producers and handlers.

In § 916.356 of the nectarine order's rules and regulations, and in § 917.459 of the peach order's rules and regulations, minimum sizes for various varieties of nectarines and peaches, respectively, are established. This rule continues in effect the adjustments to the minimum sizes authorized for various varieties of nectarines and peaches for the 2002 season. Minimum size regulations are put in place to encourage producers to leave fruit on the trees for a longer period of time. This increased growing time not only improves maturity, but also increases fruit size. Increased fruit size increases the number of packed containers per acre; and coupled with heightened maturity levels, also provides greater consumer satisfaction, fostering repeat purchases. Such improved consumer satisfaction and repeat purchases benefit both producers and handlers alike. Annual adjustments to minimum sizes of nectarines and peaches, such as these, are recommended by the NAC and PCC based upon historical data, producer and handler information regarding sizes attained by different varieties, and trends in consumer purchases.

An alternative to such action would include not establishing minimum size regulations for these new varieties. Such an action, however, would be a significant departure from the committees' practices and represent a significant change in the regulations as they currently exist, would ultimately increase the amount of less acceptable fruit being marketed to consumers, and, thus, would be contrary to the long-term interests of producers, handlers, and consumers. For these reasons, this alternative was not recommended.

The committees made recommendations regarding all the revisions in handling and lot stamping requirements after considering all available information, including comments of persons at several subcommittee meetings and comments received by committee staff. Such subcommittees include the Grade and Size Subcommittee, the Inspection and Compliance Subcommittee, the Returnable Plastic Container Task Force, and the Management Services Committee.

At the meetings, the impact of and alternatives to these recommendations were deliberated. These subcommittees and the task force, like the committees themselves, frequently consist of individual producers (and handlers, where authorized) with many years' experience in the industry who are familiar with industry practices. Like all committee meetings, subcommittee meetings are open to the public and comments are widely solicited. In the case of the Returnable Plastic Container Task Force, RPC manufacturers also were invited, as well as those handlers currently using such boxes. Information from these sources assists the committees, subcommittees, and the task force in thoroughly examining and deliberating the issues that affect the entire industry in a public setting.

This rule does not impose any additional reporting and recordkeeping requirements on either small or large handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, as noted in the final regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. However, as previously stated, nectarines and peaches under the orders have to meet certain requirements set forth in the standards issued under the Agricultural Marketing Act of 1946 (7 CFR 1621 *et seq.*). Standards issued under the Agricultural Marketing Act of 1946 are otherwise voluntary.

Further, the committees' meetings are widely publicized through the nectarine and peach industries and all interested parties are encouraged to attend and participate in committee deliberations on all issues. These meetings are held annually during the last week of November or first week of December. Like all committee meetings, the November 29, 2001, meetings were public meetings, and all entities, large and small, were encouraged to express views on these issues.

Also, various subcommittee meetings were held on November 15, 2001, and these regulations were reviewed and discussed publicly at that time.

An interim final rule concerning this action was published in the **Federal Register** on April 5, 2002 (67 FR 16286), and a correction was published in the **Federal Register** on May 29, 2002 (67 FR 37319). Copies of a summary of the rules were provided to all handlers upon publication of the interim final rule. In addition, the rules were made available through the Internet by the Office of the Federal Register and USDA and interested persons were invited to submit information on the regulatory and informational impacts of these actions on small businesses. The interim final rule provided a 60-day comment period, which ended on June 4, 2002. Twelve comments were received; eleven opposed the continuation of ''CA Utility'' quality nectarines and peaches, and one requested clarification of the regulations regarding ''Peento type peaches.''

One commenter contended that continuation of the authority to ship ''CA Utility'' quality nectarines and peaches in its current form would be costly to growers. The commenter believes that allowing up to 40 percent U.S. No. 1 fruit in a box of ''CA Utility'' quality nectarines and peaches reduces returns to growers because the higher quality U.S. No. 1 fruit is sold for lower ''CA Utility'' prices. He favored allowing only 8 percent U.S. No. 1 fruit in ''CA Utility'' packages. However, the committees have discussed changing the percentage of U.S. No. 1 nectarines and peaches required in ''CA Utility'' quality containers, and have consistently recommended allowing 40 percent U.S. No. 1 fruit in each container, because a smaller tolerance, such as 8 percent, is more difficult for the handler to pack, given all the other available tolerances already affecting individual lots and packages.

Several commenters noted, too, that a survey of growers conducted by the committees indicated that 42 percent of the growers favored continuing the authority for ''CA Utility'' shipments, while 58 percent did not favor continuation. However, as several growers and handlers explained at the Grade and Size Subcommittee meeting, each handler chooses whether to pack and ship ''CA Utility'' quality nectarines and peaches. Also, growers can choose to request that ''CA Utility'' quality nectarines and peaches from their own orchards not be packed. Handlers, too, base their decisions on whether or not to pack and ship ''CA Utility'' quality fruit on market conditions and prices.

Even some growers who opposed continued authority to ship ''CA Utility'' quality fruit suggested in the survey that it should be available on an emergency or temporary basis, such as in a hail year or a year of short production. In fact, in late May 2002, hail damaged crops in the production area.

Several commenters suggested that ''CA Utility'' quality nectarines and peaches are merely cull fruit. However, as stated earlier, ''CA Utility'' quality nectarines and peaches are a modified U.S. No. 1 grade, not culls.

Commenters also contended that since the inception of ''CA Utility'' quality regulations, the financial condition of growers has worsened. Additionally, some growers at industry meetings have indicated that they have profited by selling their ''CA Utility'' quality fruit.

In addition, another commenter stated that regulations for ''CA Utility'' quality fruit have created a large market for uninspected cull fruit through sales to cash buyers and fruit peddlers. However, staff advised the committees at the NAC and PCC meetings in November that the existence of ''CA Utility'' has actually decreased compliance problems at terminal markets by reducing the need for vendors to sell cull fruit. The availability of the higher-quality ''CA Utility'' fruit at more favorable prices appears to provide an incentive for vendors in those markets to comply with marketing order requirements. Also, since such sales may displace cull fruit sales, the availability of ''CA Utility'' quality fruit may actually increase total fruit sales because buyers are not dissatisfied as they might be after purchasing low-quality cull fruit.

In addition, the staff advised that no assessments are collected on cull fruit, while ''CA Utility'' quality fruit is assessed at the same rate as U.S. No. 1 nectarines and peaches. Also, shipments of ''CA Utility'' are subject to the ''trace-back'' program discussed earlier, while cull fruit no longer maintains an identity.

Another commenter suggested that shipments of ''CA Utility'' quality nectarines and peaches represent four percent of all tree fruit shipments or nearly three million containers. However, only about 2.1 million containers of nectarines and peaches were shipped during 2001 as ''CA Utility'' and those shipments represented approximately five percent of total nectarine and peach shipments.

An additional commenter suggested that ''CA Utility'' requirements were created to benefit the handler at the expense of the grower since the handler gets his costs for pre-cooling, packaging, palletizing, etc., before the grower gets a return for each container sold. In 1996, ''CA Utility'' quality requirements were implemented to provide an outlet for nectarines and peaches that would be acceptable in lower-income markets. As noted earlier, ''CA Utility'' quality nectarines and peaches are acceptable in some domestic and foreign markets. In fact, a May 17, 2002, newsletter published by the committees recounting marketing activities in international markets quotes a supportive South American marketing representative. The representative noted that due to initial high prices of California nectarines and peaches, the first arrivals in Colombia and Venezuela are ''CA Utility'' quality fruit.

Another commenter echoed previous concerns about the percentage of U.S. No. 1 grade fruit required in containers of ''CA Utility'' quality nectarines and peaches. The commenter suggested that if a market exists for lower-quality fruit, U.S. No. 1 fruit should not be packed with the lower-quality fruit. However, it is not practical to completely separate U.S. No. 1 fruit from ''CA Utility'' quality fruit.

Yet another commenter suggested that the committees are composed of handlers or their employees who do not care about the plight of the growers. However, § 916.20 requires nectarine committee members to be growers or employees of growers. In the case of peaches, growers are similarly situated in terms of committee membership.

Accordingly, no changes to the ''CA Utility'' quality requirements will be made based upon the comments received.

A final commenter noted that references to ''Peento (Donut) peaches'' should be corrected to read ''Peento type peaches'' since the term ''Donut'' has been patented by a broker. He also suggested exempting all Peento type peaches from the weight-count standards applicable to round varieties of peaches. In the correction published in the **Federal Register** on May 29, 2002 (67 FR 37319), the exemption from weight counts was applied to size 72 peaches regulated under § 917.459(a)(6)(iii) only. However, Peento type peaches regulated under sizes 96, 88, 84, and 80 should be similarly exempt from the weight counts applicable to round varieties of peaches. This is consistent with the committees' intent to provide a separate weight-count table applicable only to Peento type peaches, which continues in effect as a result of the interim final rule.

The commenter also noted that references to the ''Earli Rich'' peach variety should be corrected to read ''Earlirich,'' consistent with the patented name recently acquired by the nursery that handles the rootstock for the variety.

Accordingly, changes will be made to the interim final rule, based on this comment received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously-mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matters presented, the comments received, including the committees' recommendation and other information, it is found that finalizing the interim final rule, with changes, as published in the **Federal Register** (67 FR 16286, April 5, 2002), and the correction, as published in the **Federal Register** (67 FR 37319, May 29, 2002) will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 7 CFR parts 916 and 917, which was published at 67 FR 16286 on April 5, 2002, is adopted as a final rule with the following changes:

PART 917—PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 917.442 [Amended]

2. In § 917.442, paragraph (a)(5)(iv), the table headings for Tables 1 and 2 are amended by removing the words ''(Donut) Varieties'' and adding the words ''Type Peaches'' in their place;

3. In § 917.442, paragraph (a)(5)(iv), the heading for Table 3 is amended by removing the words ''(Donut) Varieties of'' and adding the word ''Type'' in their place;

§ 917.459 [Amended]

4. In § 917.459, Table 1 of paragraph (a)(1)(iv) is amended by revising the words ''Earli Rich'' to read ''Earlirich''

5. In § 917.459, paragraph (a)(2)(ii) is amended by adding the words ''except for Peento type peaches'' after the words ''96 peaches''

6. In § 917.459, paragraph (a)(3)(ii) is amended by adding the words ''except for Peento type peaches'' after the words ''92 peaches''

7. In § 917.459, paragraph (a)(4)(iii) is amended by adding the words ''except for Peento type peaches'' after the words ''83 peaches''

8. In § 917.459, paragraph (a)(5)(iii) is amended by adding the words ''except for Peento type peaches'' after the words ''76 peaches''

9. In § 917.459, paragraph (a)(6) is amended by revising the words ''Earli Rich'' to read ''Earlirich;'' and

10. In § 917.459, paragraph (a)(6)(iii) is amended by removing the words ''(Donut) Varieties of'' and adding the word ''Type'' in their place.

Dated: August 8, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–20684 Filed 8–14–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 967

[Docket No. FV98–967–1 FR]

Celery Grown in Florida; Termination of Marketing Order No. 967

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule terminates the Federal marketing order regulating the handling of celery grown in Florida (order) and the rules and regulations issued thereunder. The Florida celery industry has not operated under the order since its provisions were suspended January 12, 1995. The celery industry has experienced a loss of market share; a significant reduction in the number of producers and handlers has diminished the need for regulating Florida celery; and there is no industry support for reactivating the order. Therefore, there is no need to continue this order.

EFFECTIVE DATE: September 16, 2002.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884; telephone (863) 324–3375, Fax: (863) 325–8793; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone (202) 720–2491, Fax (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under the provisions of section 8(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule terminates the order covering celery grown in Florida.

The order was initially established in 1965 to help the Florida celery industry solve specific marketing problems and maintain orderly marketing conditions. It was the responsibility of the Florida Celery Committee (committee), the agency established for local administration of the marketing order, to periodically investigate and assemble data on the growing, harvesting, shipping, and marketing conditions of Florida celery. The committee tried to achieve orderly marketing and improve acceptance of Florida celery through the establishment of volume regulations and promotion activities.

The Florida celery industry has not operated under the marketing order for a number of years. The order and all of its accompanying rules and regulations were suspended on January 12, 1995 (60 FR 2873). Regulations have not been applied under the order since that time, and no committee has been appointed since then.

In 1965, when the marketing order was issued, there were over 40 producers of Florida celery. The earliest handling figures available indicate that in 1983 there were 11 handlers. As of the date of suspension of the order (January 12, 1995), there were six handlers of Florida celery who were subject to regulation under the marketing order and five celery producers within the production area. Currently, there is one producer who is also a handler.

When the order was suspended, all of the committee members and their alternates were named as trustees to oversee the administrative affairs of the order. USDA contacted as many of these trustees as it could with respect to the need for reinstating the marketing order. All of the individuals contacted (10 of the 18 trustees) were in favor of terminating the order.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There is one handler of Florida celery who would be subject to regulation under the marketing order. This handler is also a producer within the production area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. The Florida celery producer-handler may be classified as a small entity.

This final rule terminates the order regulating the handling of celery grown in Florida. The order and its accompanying rules and regulations were suspended on January 12, 1995.

No regulations have been implemented since then, and there is no indication that such regulations will again be needed.

The industry has been operating without a marketing order since its suspension. Reestablishing the order would mean additional cost to the industry stemming from assessments to maintain the order (the last assessment was $0.01 per crate) and any associated costs generated by regulation. By not reinstating the marketing order, the industry benefits from avoiding these costs. Regulatory authorities that will be terminated include authority to implement grade, size, container, and inspection requirements and provisions for research and development and volume regulation. Because the industry has been operating without an order, termination of the order would have no noticeable effect on either small or large operations.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements under the order were approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0145. When the order was suspended on January 12, 1995, these information collection requirements were also suspended. Now that the order is being terminated, these requirements are eliminated.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

A proposed rule concerning this action was published in the October 9, 1998, issue of the **Federal Register** (63 FR 54382) giving interested persons until December 8, 1998, to file written comments. No comments were received.

Therefore, pursuant to section 8c(16)(A) of the Act, USDA has determined that Marketing Order No. 967, covering celery grown in Florida, and the rules and regulations issued thereunder, no long tend to effectuate the declared policy of the Act, and are hereby terminated.

Section 8c(16)(A) of the Act requires USDA to notify Congress 60 days in advance of the termination of a Federal marketing order. Congress was so notified.

List of Subjects in 7 CFR Part 967

Celery, Marketing agreements, Reporting and recordkeeping requirements.

PART 967—[REMOVED]

For the reasons set forth in the preamble, and under authority of 7 U.S.C. 601–674, 7 CFR part 967 is removed.

Dated: August 8, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–20685 Filed 8–14–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Docket No. FV02–987–1 FR]

Domestic Dates Produced or Packed in Riverside County, California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the California Date Administrative Committee (Committee) for the 2002–03 and subsequent crop years from $0.25 to $0.90 per hundredweight of dates handled. The Committee locally administers the marketing order that regulates the handling of dates produced or packed in Riverside County, California. Authorization to assess date handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The crop year begins October 1 and ends September 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Marketing Assistant, or Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey St., suite 102B, Fresno, CA 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 987, both as amended (7 CFR part 987), regulating the handling of domestic dates produced or packed in Riverside County, California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California date handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate issued herein will be applicable to all assessable dates beginning on October 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2002–03 and subsequent crop years from $0.25 to $0.90 per hundredweight of assessable dates handled.

The California date marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and

producer-handlers of California dates. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2001–02 and subsequent crop years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on April 8, 2002, and unanimously recommended 2002–03 expenditures of $273,450 and an assessment rate of $0.90 per hundredweight of dates handled. In comparison, last year's budgeted expenditures were $90,800. The recommended assessment rate of $0.90 is $0.65 higher than the rate currently in effect. The higher assessment rate is needed to fund the industry's marketing and promotion programs under the Committee budget. These programs have been implemented under a State marketing order. However, the date industry concluded that it was in its best interest to implement the programs under the Federal marketing order because recent court actions have been filed against several California State marketing orders under which similar programs have been implemented.

Proceeds from the sales of cull dates are usually deposited in a surplus account for subsequent use by the Committee in covering the surplus pool share of the Committee's expenses. Handlers may also dispose of cull dates of their own production within their own livestock-feeding operation; otherwise, such cull dates must be shipped or delivered to the Committee for sale to non-human food product outlets.

Last year, the Committee applied $5,000 of surplus account monies to cover surplus pool expenses. Based on a recent trend of declining sales of cull dates over the past few years and reduced surplus pool costs, the Committee decided not to apply any of the surplus pool funds toward the 2002–03 Committee budget. The Committee, instead, recommended assessing handlers for the full amount of the increased budget that includes marketing and promotion programs.

The budgeted administrative expenses for the 2002–03 year include $123,450 for labor and office expenses. This compares to $90,800 in budgeted expenses in 2000–01. In addition, $150,000 has been budgeted for marketing and promotion under the program for the 2002–03 crop year.

The assessment rate of $0.90 per hundredweight of assessable dates was derived by applying the following formula where:

A = Administrative Reserve ($39,450 of the anticipated $50,000 Administrative Reserve)
B = 2002–03 expected shipments (260,000 hundredweight in pounds)
C = 2002–03 expenses ($273,450);
$(C - A) \div B$ = $0.90 per hundredweight.

Estimated shipments should provide $234,000 in assessment income. Income derived from handler assessments and the administrative reserves would be adequate to cover budgeted expenses. Funds in the reserve are expected to total about $10,550 by September 30, 2003, and therefore would be less than the maximum permitted by the order (not to exceed 50 percent of the average of expenses incurred during the most recent five preceding crop years; § 987.72(c)).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2002–03 budget and those for subsequent crop years would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 producers of dates in the production area and approximately 9 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts are less than $5,000,000. Five of the 9 handlers (55 percent) shipped over $5,000,000 of dates and could be considered large handlers by the Small Business Administration. Four of the 9 handlers (45 percent) shipped under $5,000,000 of dates and could be considered small handlers. The majority of California date producers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2002–03 and subsequent crop years from $0.25 to $0.90 per hundredweight of assessable dates handled. The Committee unanimously recommended 2002–03 expenditures of $273,450 and the $0.90 per hundredweight assessment rate. The recommended assessment rate is $0.65 higher than the rate currently in effect. The quantity of assessable dates for the 2002–03–crop year is estimated at 260,000 hundredweight. Thus, the $0.90 per hundredweight rate should provide $234,000 in assessment income and, together with the administrative reserve funds available to the Committee, be adequate to meet this year's expenses.

The higher assessment rate is needed to fund marketing and promotion programs under the Committee budget. The programs have been implemented under a State marketing order for several years. However, because of legal challenges recently brought against several State marketing order programs implementing marketing and promotion programs, the date industry has decided to implement these programs under the Federal marketing order.

In addition, proceeds from the sales of cull dates are usually deposited in a surplus account for subsequent use by the Committee in covering the surplus pool share of the Committee's expenses.

Handlers may also dispose of cull dates of their own production within their own livestock-feeding operation; otherwise, such cull dates must be shipped or delivered to the Committee for sale to non-human food product outlets. The Committee anticipates a reduction in surplus funds available to the Committee from the sale of cull dates. As a consequence, it decided to fund all of the Committee's expenses with assessment funds during 2002–03.

The budgeted administrative expenses for the 2002–03 year include $123,450 for labor and office expenses. This compares to $90,800 in budgeted expenses in 2000–01. In addition, $150,000 has been budgeted for marketing and promotion under the marketing order for the 2002–03 crop year.

The Committee reviewed and unanimously recommended 2002–03 expenditures of $273,450, which include marketing and promotion programs. Prior to arriving at this budget, the Committee considered alternative expenditure levels, including a proposal to not have a budget. The assessment rate of $0.90 per hundredweight of assessable dates was then determined by applying the following formula where:

A = Administrative Reserve ($39,450 of the anticipated $50,000 Administrative Reserve)
B = 2002–03 expected shipments (260,000 hundredweight in pounds)
C = 2002–03 expenses ($273,450);
(C − A) ÷ B = $0.90 per hundredweight.

Estimated shipments should provide $234,000 in assessment income. Income derived from handler assessments and the administrative reserves would be adequate to cover budgeted expenses. Funds in the administrative reserve are expected to total about $10,550 by September 30, 2003, and therefore would be less than the maximum permitted by the order (not to exceed 50 percent of the average of expenses incurred during the most recent five preceding crop years; § 987.72(c)).

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 2002–03 season could range between $30 and $75 per hundredweight of dates. Therefore, the estimated assessment revenue for the 2002–03 crop year as a percentage of total grower revenue could range between 1 and 3 percent.

This action increases the assessment obligation imposed on handlers under the Federal marketing order. While assessments impose some additional costs on handlers under the Federal marketing order, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the California date industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the April 8, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California date handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in **Federal Register** on June 14, 2002 (67 FR 40876). Copies of the proposed rule were also mailed or sent via facsimile to date handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending July 15, 2002, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http//www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 987 is amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 987 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 987.339 is revised to read as follows:

§ 987.339 Assessment rate.

On and after October 1, 2002, an assessment rate of $0.90 per hundredweight is established for California dates.

Dated: August 8, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–20686 Filed 8–14–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV02–993–4 IFR]

Dried Prunes Produced in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the Prune Marketing Committee (Committee) under Marketing Order No. 993 for the 2002–03 and subsequent crop years from $2.80 to $2.60 per ton of salable dried prunes. The Committee locally administers the marketing order which regulates the handling of dried prunes grown in California. Authorization to assess dried prune handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The crop year begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: August 16, 2002. Comments received by October 15, 2002, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202)

720–8938; or e-mail: *moab.docketclerk@usda.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Program Assistant, or Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901; Fax (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes grown in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California dried prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable dried prunes beginning on August 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the USDA'S ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2002–03 and subsequent crop years from $2.80 per ton to $2.60 per ton of salable dried prunes.

The California dried prune marketing order provides authority for the Committee, with the approval of the USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California dried prunes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2001–02 and subsequent crop years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 27, 2002, and unanimously recommended 2002–03 expenditures of $386,880 and an assessment rate of $2.60 per ton of salable dried prunes. In comparison, last year's budgeted expenditures were $384,370. The recommended assessment rate of $2.60 per ton is $0.20 lower than the rate currently in effect. The $0.20 per ton decrease in the assessment rate would allow the Committee to meet its 2002–03 expenses. The Committee was able to recommend a lower assessment rate this year because salable prune production this year is expected to be 148,800 tons, 16,750 tons higher than production last year. Although 2002–03 recommended expenses are slightly higher than 2001–02 expenses, an assessment rate of $2.60 per ton will provide sufficient funds for Committee operations this year.

The following table compares major budget expenditures recommended by the Committee on June 27, 2002, and major budget expenditures in the revised 2001–02 budget.

Budget expense categories	2001–02 (Revised)	2002–03
Total Personnel Salaries	$226,315	$232,575
Total Operating Expenses	123,700	136,850
Reserve for Contingencies	34,355	17,455

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by the estimated salable tons of California dried prunes. Production of dried prunes for the year is estimated at 148,800 salable tons, which should provide $386,880 in assessment income. Income derived from handler assessments would be adequate to cover budgeted expenses. Interest income also would be available if assessment income is reduced for some reason. The Committee is authorized to use excess assessment funds from the 2001–02 crop year (currently estimated at $76,878) for up to 5 months beyond the end of the crop year to meet 2001–02 crop year expenses. At the end of the 5 months, the Committee refunds or credits excess funds to handlers (§ 993.81(c)).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2002–03 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,205 producers of dried prunes in the production area and approximately 24 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

An updated prune industry profile shows that 9 of the 24 handlers (37.5%) shipped over $5,000,000 of dried prunes and could be considered large handlers by the Small Business Administration. Fifteen of the 24 handlers (62.5%) shipped under $5,000,000 of dried prunes and could be considered small handlers. An estimated 32 producers, or less than 3% of the 1,205 total producers, would be considered large growers with annual income over $500,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2002–03 and subsequent crop years from $2.80 per ton to $2.60 per ton of salable dried prunes. The Committee unanimously recommended 2002–03 expenditures of $386,880 and an assessment rate of $2.60 per ton of salable dried prunes. The recommended assessment rate is $0.20 lower than the current rate. The quantity of assessable dried prunes for the 2002–03 crop year is now estimated at 148,800 salable tons. Thus, the $2.60 rate should provide $386,880 in assessment income and be adequate to meet this year's expenses. Interest income also would be available to cover budgeted expenses if the 2002–03 expected assessment income falls short.

The following table compares major budget expenditures recommended by the Committee on June 27, 2002, and major budget expenditures in the revised 2001–02 budget.

Major budget expense categories	2001–02 (Revised)	2002–03
Total Personnel Salaries	$226,315	$232,575
Total Operating Expenses	123,700	136,850
Reserve for Contingencies	34,355	17,455

The Committee reviewed and unanimously recommended 2002–03 expenditures of $386,880. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Executive Subcommittee. An alternative to this action would be to continue with the $2.80 per ton assessment rate, but the anticipated larger crop, with an assessment rate of $2.80 per ton, would generate monies in excess of that needed to fund all the budget items. The assessment rate of $2.60 per ton of salable dried prunes was determined by dividing the total recommended budget by the estimated salable dried prunes. The Committee is authorized to use excess assessment funds from the 2001–02 crop year (currently estimated at $76,878) for up to 5 months beyond the end of the crop year to fund 2002–03 crop year expenses. At the end of the 5 months, the Committee refunds or credits excess funds to handlers (§ 993.81(c)). Anticipated assessment income and interest income during 2002–03 would be adequate to cover authorized expenses.

The grower price for the 2002–03 season is expected to average above the estimated 2001–02 average grower price of about $750 per salable ton of dried prunes. Based on estimated shipments of 148,800 salable tons, assessment revenue during the 2002–03 crop year is expected to be less than 1 percent of the total expected grower revenue.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the California dried prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 27, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large California dried prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab/html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the

information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2002–03 crop year begins on August 1, 2002, and the marketing order requires that the rate of assessment for each crop year apply to all assessable dried prunes handled during such crop year; (2) the rule would decrease the assessment rate for assessable prunes beginning with the 2002–03 crop year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and Recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 993.347 is revised to read as follows:

§ 993.347 Assessment rate.

On and after August 1, 2002, an assessment rate of $2.60 per ton is established for California dried prunes.

Dated: August 8, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–20687 Filed 8–14–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–08–AD; Amendment 39–12865; AD 2002–16–26]

RIN 2120–AA64

Airworthiness Directives; Bombardier-Rotax GmbH Type 912 F and 914 F Series Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain serial numbers (SN's) of Bombardier-Rotax GmbH type 912 F and 914 F series reciprocating engines. This action requires initial and repetitive visual inspections of the engine crankcase for cracks. This amendment is prompted by reports of several instances of engine crankcases found cracked in service. The actions specified in this AD are intended to prevent oil loss caused by cracks in the engine crankcase, which could lead to in-flight failure of the engine and forced landing.

DATES: Effective September 16, 2002.

Comments for inclusion in the Rules Docket must be received on or before October 15, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–08–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *''9-ane-adcomment@faa.gov''*. Comments sent via the Internet must contain the docket number in the subject line. Information regarding this action may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: Austro Control, which is the airworthiness authority for Austria, recently notified the FAA that an unsafe condition may exist on certain SN's of Bombardier-Rotax GmbH type 912 F and 914 F series reciprocating engines. Austro Control advises that reports have been received of three engine crankcases found cracked in service. To date, there have been no engine failures due to cracks in the crankcase. However, Austro Control has determined that an engine could fail due to oil loss from a cracked crankcase. This condition, if not corrected, could result in an inflight failure of the engine and forced landing.

Bilateral Airworthiness Agreement

Bombardier-Rotax GmbH type 912 F and 914 F series reciprocating engines are manufactured in Austria and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Austro Control has kept the FAA informed of the situation described above. The FAA has examined the findings of Austro Control, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination of an Unsafe Condition and Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Bombardier-Rotax GmbH type 912 F and 914 F series reciprocating engines of the same type design, this AD is being issued to prevent oil loss caused by cracks in the engine crankcase, which could lead to in-flight failure of the engine and forced landing. This AD requires initial visual inspection for cracks of the engine crankcase of certain SN engines, within 50 hours time-in-service (TIS) after the effective date of this AD, and repetitive visual inspections at each 100-hour, annual, or progressive inspection, or within 110 hours TIS since last inspection, whichever occurs first. If any cracks are found the engine must be replaced with a serviceable engine. The SN's affected are, for 912 F series engines, SN's 4,412.796 or lower, and for 914 F series engines, SN's 4,420.313 or lower. Examples of lower SN's are 4,412.795, 4,412.794, and 4,412.793, and 4,420.312, 4,420.311, and 4,420.310.

Immediate Adoption of This AD

Since a situation exists that requires the immediate adoption of this

regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NE–08–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–16–26 Bombardier-Rotax GmbH: Amendment 39–12865. Docket No. 2002–NE–08–AD.

Applicability

This airworthiness directive (AD) is applicable to Bombardier-Rotax GmbH type 912 F series reciprocating engines serial number (SN) 4,412.796, or lower, and 914 F series reciprocating engines SN 4,420.313, or lower. These engines are installed on, but not limited to, Aeromot-Industria Mecanico Metalurgica Itda. model AMT–300, Diamond Aircraft Industries DA20–A1, Diamond Aircraft Industries GmbH Model HK 36 TTS, Iniziative Industriali Italiane S.p.A. Sky Arrow 650 series, and Stemme S10–VT aircraft.

Note 1: Examples of lower SN's are 4,412.795, 4,412.794, and 4,412.793, and 4,420.312, 4,420.311, and 4,420.310.

Note 2: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent oil loss caused by cracks in the engine crankcase, which could lead to in-flight failure of the engine and forced landing, do the following:

Initial Inspection

(a) Within 50 hours time-in-service (TIS) from the effective date of this AD, perform a visual inspection as follows:

(1) Inspect the engine crankcase (item 1, Figure 1 of this AD) for cracks especially in the area of cylinder 1 upper side (item 2), between cylinder 1 and 3 upper side (item 3), and cylinder 4 lower side (item 4).

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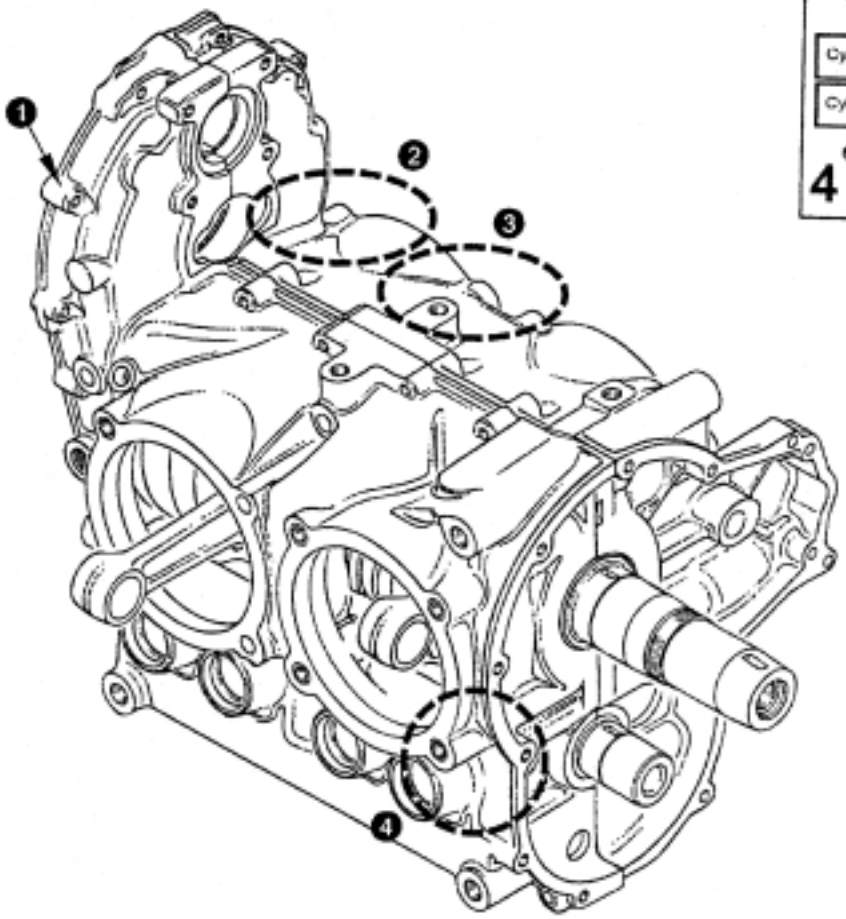

1. Engine Crankcase
2. Cylinder 1 Upper Side
3. Cylinder 3 Upper Side
4. Cylinder 4 Lower Side

Figure 1. Engine Crankcase Inspection Areas

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(2) Cracks in crankcases of engines with a ROTAX cooling air baffle may not be easily visible, and oil leaks may be an indication of cracks. Visually inspect for oil leaks in areas of (item 2) and (item 3).

(3) If oil leaks are found, determine the source by either using a borescope or removing the object blocking the view such as the air baffle or accessory, and perform the inspection.

(4) If the engine crankcase is cracked, replace engine before further flight. Repair oil leaks from any other cause.

Note 3: Information concerning this inspection can be found in Bombardier-Rotax mandatory service bulletins No's. SB–912–029, dated May 2001/SB–914–018, Revision 1, dated December 2001.

Repetitive Inspections

(b) Visually inspect the engine crankcase (item 1, Figure 1 of this AD) for cracks at each 100-hour, annual, or progressive inspection, or within 110 hours TIS since last inspection, whichever occurs first, in accordance with paragraph (a) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

Note 5: The subject of this AD is addressed in Austro Control airworthiness directive No. 107 R1, dated December 1, 2001.

Effective Date

(e) This amendment becomes effective on August 30, 2002.

Issued in Burlington, Massachusetts, on August 7, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–20679 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2001–9813; Airspace Docket No. 00–AWA–7]

RIN 2120–AA66

Modification of the Memphis International Airport Class B Airspace Area; TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Memphis International Airport (MEM) Class B airspace area. Specifically, this action reconfigures existing sub-area boundaries, adds one new sub-area, and lowers the floor of Class B airspace in certain segments of the Memphis Class B airspace area. In addition, this modification redescribes the boundaries of the Memphis Class B airspace area using the Memphis Very High Frequency Omnidirectional Range Tactical Air Navigation (VORTAC) facility as the reference point. The FAA is taking this action to more efficiently align the Memphis Class B airspace area to accommodate simultaneous parallel instrument landing system (ILS) approach procedures and simultaneous intersecting runway operations. This change will enhance safety, reduce the potential for midair collisions, and improve the management of air traffic operations in the Memphis terminal area. Further, this effort supports the FAA's National Airspace Redesign project goal of optimizing terminal and enroute airspace areas to reduce aircraft delays and improve system capacity.

EFFECTIVE DATE: 0901 UTC, October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page *(http://dms.dot.gov/search).*

(2) On the search page, type in the last four digits of the Docket Number shown at the beginning of this rule. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number for the item you wish to view.

Also an electronic copy of this document can be downloaded from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: (703) 321–3339) or the **Federal Register's** electronic bulletin board service (telephone: (202) 512–1661) using a modem and suitable communications software.

Internet users may reach the FAA's web page at *http://www.faa.gov* or the **Federal Register** Web page at *http://www.access.gpo.gov/nara* for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, Attention: Airspace and Rules Division, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783.

Communications must identify the docket number of this final rule. Persons interested in being placed on a mailing list for future NPRM's or final rules should contact the Federal Aviation Administration, Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Related Rulemaking Actions

On May 20, 1970, the FAA published the Designation of Federal Airways, Controlled Airspace, and Reporting Points Final Rule in the **Federal Register** (35 FR 7782). This rule provided for the establishment of Terminal Control Airspace (TCA) areas (now known as Class B airspace areas).

On June 21, 1988, the FAA published the Transponder With Automatic Altitude Reporting Capability Requirement Final Rule in the **Federal Register** (53 FR 23356). This rule requires all aircraft to have an altitude encoding transponder when operating within 30 nautical miles (NM) of any designated Class B airspace area primary airport from the surface up to 10,000 feet MSL. This rule excluded those aircraft that were not originally certificated with an engine-driven electrical system (or those that have not subsequently been certified with such a system), balloons, or gliders operating outside of the Class B airspace area, but within 30 NM of the primary airport.

On October 14, 1988, the FAA published the Terminal Control Area Classification and Terminal Control Area Pilot and Navigation Equipment Requirements Final Rule in the **Federal Register** (53 FR 40318). This rule, in part, requires the pilot-in-command of a civil aircraft operating within a Class B airspace area to hold at least a private pilot certificate, except for a student pilot who has received certain documented training.

On December 17, 1991, the FAA published the Airspace Reclassification Final Rule in the **Federal Register** (56 FR 65638). This rule discontinued the use of the term ''Terminal Control Area'' and replaced it with the designation ''Class B airspace area.'' This change in terminology is reflected in this final rule.

Background

The Class B airspace area program was developed to reduce the potential for midair collision in the congested airspace surrounding airports with high density air traffic operations by providing an area wherein all aircraft are subject to certain operating rules and equipment requirements. The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions.

In 1970, a study of terminal airspace areas found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, or military aircraft, or another GA aircraft. The basic causal factor common to these conflicts was the mix of aircraft operating under visual flight rules (VFR) and aircraft operating under instrument flight rules (IFR). The establishment of Class B airspace areas provides a method to accommodate increasing numbers of IFR and VFR operations. The regulatory requirements of Class B airspace areas afford the greatest protection for the greatest number of people by giving air traffic control (ATC) the increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

The standard configuration of Class B airspace areas normally contains three concentric circles centered on the primary airport extending to 10, 20, and 30 NM, respectively. The standard vertical limit of these airspace areas normally should not exceed 10,000 feet mean sea level (MSL), with the floor established at the surface in the inner area, and at levels appropriate to the containment of operations in the outer areas. Variations of these configurations may be utilized contingent on the terrain, adjacent regulatory airspace, and factors unique to a specific terminal area.

Public Input

On November 7, 2001, the FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (Airspace Docket No. 00–AWA–7; 66 FR 56251) proposing to modify the Memphis International Airport Class B airspace area. The comment period for this NPRM closed on January 7, 2002.

In response to the notice, the FAA received nine written comments. All comments received were considered before making a determination on this final rule. An analysis of the comments received and the FAA's response are summarized below.

Discussion of Comments

The Aircraft Owners and Pilots Association and the Air Line Pilots Association submitted comments in support of the proposed modifications. The Experimental Aircraft Association (EAA) concurred with the shift of the airspace reference point to the Memphis VORTAC, but questioned the need for size of the Class B airspace area at Memphis. EAA submitted an alternative Class B airspace design intended to better utilize Class B airspace and make the entire area more accommodating to GA. EAA recommended that the FAA change the MEM Class B airspace proposal to retain the present Class B airspace configuration within 20 NM, and extend the Class B airspace area outward to the 30 NM ring only in four separate sectors (one each to the north, south, east, and west of the airport) based on the instrument approach paths for Runways 36/18 and 9/27. EAA termed these extensions ''key holes.'' EAA also suggested that the remaining Class B airspace beyond the 20–NM ring, and in between the ''key hole'' extensions, be eliminated. EAA further recommended that the floor of Class B airspace in Area E extend no lower than 5,000 feet MSL, rather than the 4,000-foot floor implemented in this rule.

The FAA carefully considered the changes suggested by EAA and determined that the recommended configuration would not provide sufficient Class B airspace to ensure the containment of air carrier operations, and would not facilitate the efficient management of air traffic operations in the Memphis terminal area. The modifications to Areas A, B, and C are required to contain aircraft operations during the use of simultaneous ILS approaches to the north/south parallel runways and simultaneous intersecting runway operations. The modifications provide the additional Class B airspace needed by ATC to ensure the required 1,000 feet vertical separation is maintained while vectoring multiple aircraft for simultaneous ILS approaches, and to permit ATC to employ proper intercept angles during these simultaneous operations. Currently, the initial approach fix (COVIM) for Runway 27 lies within Area C which has a floor of 3,000 feet MSL. Therefore, an aircraft flying the approach and crossing COVIM at the published altitude of 1,900 feet MSL is well below the floor of the present Class B airspace area. The expanded Area B will encompass COVIM within Class B airspace thereby providing appropriate protection for aircraft flying the ILS Runway 27 approach. These modifications will not only enable increased use of simultaneous ILS approaches and simultaneous intersecting runway operations, but will also enhance the efficiency of operations in the Memphis terminal area.

The FAA concluded that EAA's suggested ''key hole'' design will eliminate Class B airspace that currently encompasses all four standard terminal arrival route (STAR) fixes serving the Memphis International Airport. Over 90 per cent of the traffic at Memphis International is air carrier/air taxi aircraft which routinely enter the Memphis terminal area via one of the four STARs. The deletion of these Class B airspace segments will also affect airspace used by ATC to vector and to separate aircraft that are being sequenced for simultaneous parallel approaches and simultaneous intersecting runway operations, as mentioned above. Regarding the floor of Class B airspace in Area E, EAA questioned the need for a base altitude of 4,000 feet MSL extending as far to the north and south of the Runway 27 instrument approach corridor as is encompassed by the new Area E. Area E was designed to meet an increasing traffic demand and to maximize airport capacity at Memphis. The 4,000-foot-base altitude provides the procedural capability to more efficiently utilize Runway 27 as an arrival runway. When Runway 27 arrivals are in progress, the final approach for Runway 27 often extends out to at least 20 NM. The new Area E provides airspace to more efficiently accommodate the increasing use of Runway 27 for arrivals.

Another commenter agreed with use of the Memphis VORTAC as the Class B airspace area reference point, but questioned both the present size of the Memphis Class B airspace area when

compared to other Class B airspace locations, as well as the modifications proposed in the NPRM. The commenter endorsed the proposed design as submitted by EAA. The FAA finds that the determination of a Class B airspace area's configuration must be airport-specific and is based on the particular circumstances of the primary airport. A variety of factors are considered such as the volume of traffic, runway configuration, arrival and departure routings, adjacent airspace considerations, etc. The primary purpose of Class B airspace is to reduce the potential for midair collisions near airports with high density air traffic operations, and to contribute to the efficiency and safety of operations in the area. Due to these factors, one cannot necessarily compare the design of one Class B airspace location against another. The FAA believes that the modified Memphis Class B airspace area affords the appropriate Class B airspace protection between participating and nonparticipating aircraft in the Memphis terminal area, while considering the needs of all aviation users. The design EAA recommended was discussed above.

Two comments cited concerns that the proposed modifications would affect emergency medical service (EMS) helicopter access to and from various hospitals in and around the Memphis Class B airspace area. The commenter suggested the use of cutouts or a VFR corridor to accommodate EMS helicopter operations. The FAA will resolve these concerns by developing a Letter of Agreement with the operators to accommodate EMS operations.

One GA pilot wrote that the proposed modifications are unwarranted. The commenter stated that the modifications would compress existing traffic and increase the probability of collisions with aircraft trying to remain clear of Class B airspace. Additionally, the commenter said that the proposal would cause problems for pilots entering and leaving the traffic pattern at the Olive Branch Airport (OLV) in Mississippi, and that egress from OLV to the west is blocked by Class B airspace. The FAA does not agree with the commenter. The primary purpose of Class B airspace is to reduce the potential for midair collisions in the airspace surrounding airports with high-density air traffic operations. The dimensions of the Memphis Class B airspace area were designed based on the specific needs of the primary airport and to enhance the management of air traffic operations in the terminal area. The Area B modifications were designed to accommodate both simultaneous ILS approaches to the North/South parallel runways, and instrument approaches to Runways 9/27 at Memphis. The FAA acknowledges that the close proximity of OLV to the Memphis International Airport can be a factor for pilots operating to or from OLV. However, the volume of traffic and the number of enplaned passengers served by Memphis dictate the need for this Class B airspace configuration. By designing the expanded Area B boundaries to exclude OLV, the FAA sought to minimize possible impact on nonparticipating aircraft operating to and from that airport. Further, the existing Area B boundary lies in close proximity to the OLV traffic pattern to the west of the airport. The OLV traffic pattern altitude is 1,200 feet MSL, while the floor of Area B is 1,800 feet MSL. This allows for continued nonparticipating aircraft operations to, from, and within the OLV traffic pattern beneath the Class B airspace floor. Regarding the comment that egress to the west from OLV is blocked by Class B airspace, the FAA responds that departing OLV to the west is currently affected by the location of the existing Area B boundary as well as the Class B airspace surface area further to the west of OLV. However, since the floor of the modified Area B remains unchanged at 1,800 feet MSL, egress to the west of OLV for nonparticipating aircraft is basically the same as exists under the current Class B airspace configuration.

The remaining two comments were duplicate submissions to the docket.

The Rule

This amendment to 14 CFR part 71 modifies the Memphis Class B airspace area. Specifically, this action expands the lateral limits of Areas A, B, and C, reduces the size of Area D, and establishes a new Area E. In addition, this modification revises the description of the Memphis Class B airspace area by using radials and mileages from the Memphis VORTAC as the reference point instead of the current point-in-space latitude/longitude positions. Area A is modified to more efficiently align the lateral dimensions of the surface area and to provide the additional Class B airspace needed for simultaneous ILS approach procedures, while accommodating secondary airport operations. The lateral dimensions of Area B are expanded slightly to ensure the containment of instrument procedures using a 300-foot-per-mile gradient, to provide additional airspace for vectoring aircraft for simultaneous parallel ILS approaches, and to accommodate simultaneous intersecting runway operations. To the east of the airport, the expanded Area B boundary is adjusted to exclude the Olive Branch Airport (OLV). Area C is modified by extending the boundaries of Area C outward to the Memphis VORTAC 30-mile arc in the segments to the north and south of the Memphis Airport, thereby incorporating into Area C, portions of airspace formerly in Area D. The effect of this modification is the lowering of the floor of Class B airspace from the current 5,000 feet MSL to 3,000 feet MSL in the airspace incorporated by the new Area C extensions. This change to Area C is needed to ensure the efficient use of and containment of simultaneous parallel approach procedures. As a result of the Area C modification, Area D is reduced in size. The revised Area D consists only of that airspace generally between the 20-mile and 30-mile arcs of the Memphis VORTAC, and within the area bounded by the 199° radial clockwise to the 332° radial. The remaining portion of the current Area D airspace to the north and south of the airport is incorporated into the revised Area C. That portion of the current Area D located to the east of the airport is incorporated into the new Area E. A new Area E is established to the east of the airport consisting of airspace that is currently part of Area D. Area E consists of that airspace generally between the 20-mile and 30-mile arcs of the Memphis VORTAC, and bounded by the MEM 019° radial, clockwise to the 151° radial. This change lowers the floor of Class B airspace in that area from the current 5,000 feet MSL to 4,000 feet MSL. This lower Class B airspace floor, combined with the lateral extent of Area E is required to contain Runway 27 instrument approaches and to provide the procedural capability to more efficiently utilize Runway 27 as an arrival runway.

These modifications to the Memphis Class B airspace area enhance safety by improving the containment of turbojet aircraft within Class B airspace and by simplifying navigation in the Memphis terminal area for aircraft that are not global positioning system-equipped. The modifications improve flow of traffic and the management of air traffic operations in the Memphis terminal area. Finally, this action supports the FAA's National Airspace Redesign project goal of optimizing terminal and enroute airspace areas to reduce aircraft delays and improve system capacity.

The coordinates for this airspace docket are based on North American Datum 83. Class B airspace areas are published in paragraph 3000 of FAA Order 7400.9J, Airspace Designations and Reporting Points, dated August 31,

2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR section 71.1. The Class B airspace area listed in this document will be published subsequently in the Order.

Regulatory Evaluation Summary

Changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) Will generate benefits that justify its minimal costs and is not a ''significant regulatory action'' as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will not constitute a barrier to international trade; and (5) will not contain any Federal intergovernmental or private sector mandate. These analyses are summarized here in the preamble, and the full Regulatory Evaluation is in the docket.

This final rule will modify the Memphis, TN, Class B airspace by reconfiguring the sub-area boundaries, adding one new sub-area and lowering the altitude floor in certain segments of that airspace. In addition, the FAA will describe the boundaries of the Memphis Class B airspace area using the Memphis VORTAC as the reference point.

The final rule will generate benefits for system users and the FAA in the form of enhanced operational efficiency and simplified navigation in the Memphis terminal area for aircraft that are not global positioning system-equipped. Since Class B airspace is already in place at Memphis, and the modifications in this rule are not major expansions of Class B airspace, minimal costs will be incurred by aircraft operators. Thus, the FAA has determined that this final rule will be cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule may impose some minimal circumnavigation costs on some individuals operating in the Memphis area; but the final rule will not impose any costs on small business entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of this final rule and has determined that it will have only a domestic impact and therefore no effect on any trade-sensitive activity.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Paperwork Reduction Act

This rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

Conclusion

In view of the minimal cost of compliance of this final rule and the enhancements to aviation safety and operational efficiency, the FAA has determined that this final rule will be cost-beneficial.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 3000—Subpart B Class B Airspace

* * * * *

ASO TN B Memphis, TN [Revised]

Memphis International Airport (Primary Airport)
(Lat. 35°02′33″ N., long. 89°58′36″ W.)
Memphis VORTAC (MEM)
(Lat. 35°00′54″ N., long. 89°59′00″ W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within the area bounded by a line beginning at the intersection of the MEM 090° radial and the MEM 5-mile arc; thence clockwise along the 5-mile arc to the MEM 270° radial; thence west along the 270° radial to the 8-mile arc; thence clockwise along the 8-mile arc to the MEM 090° radial; thence west along the 090° radial to the point of beginning.

Area B. That airspace extending upward from 1,800 feet MSL to and including 10,000 feet MSL within the area bounded by a line beginning at the intersection of the MEM 090° radial and the MEM 12-mile arc; thence west along the 090° radial to the MEM 9-mile arc; thence clockwise along the 9-mile arc to the MEM 111° radial; thence southeast along the 111° radial to the MEM 12-mile arc; thence clockwise along the 12-mile arc to the MEM 134° radial; thence southeast along the 134° radial to the MEM 16-mile arc; thence clockwise along the 16-mile arc to the MEM 217° radial; thence northeast along the 217° radial to the MEM 12-mile arc thence clockwise along the 12-mile arc to the MEM 313° radial; thence northwest along the 313° radial to the MEM 16-mile arc; thence clockwise along the 16-mile arc to the MEM 038° radial; thence southwest along the 038° radial to the MEM 12-mile arc; thence clockwise along the 12-mile arc to the point of beginning.

Area C. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL within the area bounded by a line beginning at the intersection of the MEM 019° radial and the MEM 30-mile arc; thence southwest along the 019° radial to the MEM 20-mile arc; thence clockwise along the 20-mile arc to the MEM 151° radial; thence southeast along the 151° radial to the 151° radial at 27 miles; thence via a line drawn southwestward to the intersection of the MEM 163° radial and the MEM 30-mile arc; thence clockwise along the 30-mile arc to the MEM 199° radial; thence northeast along the 199° radial to the MEM 20-mile arc; thence clockwise along the 20-mile arc to the MEM 332° radial; thence northwest along the 332° radial to the 332° radial at 29 miles; thence via a line drawn northeastward to the intersection of the MEM 338° radial and the MEM 30-mile arc; thence clockwise along the 30-mile arc to the point of beginning.

Area D. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL within the area bounded by a line beginning at the intersection of the MEM 199° radial and the MEM 20-mile arc; thence southwest along the 199° radial to the MEM 30-mile arc; thence clockwise along the 30-mile arc to the MEM 302° radial; thence via a line drawn northeastward to the MEM 332° radial at 29 miles; thence southeast along the MEM 332° radial to the MEM 20-mile arc; thence counterclockwise along the 20-mile arc to the point of beginning.

Area E. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL within the area bounded by a line beginning at the intersection of the MEM 019° radial and the MEM 30-mile arc; thence clockwise along the 30-mile arc to the MEM 103° radial; thence via a line drawn southwestward to the MEM 151° radial at 27 miles; thence northwest along the 151° radial to the MEM 20-mile arc; thence counterclockwise along the 20-mile arc to the MEM 019° radial; thence northeast along the 019° radial to the point of beginning.

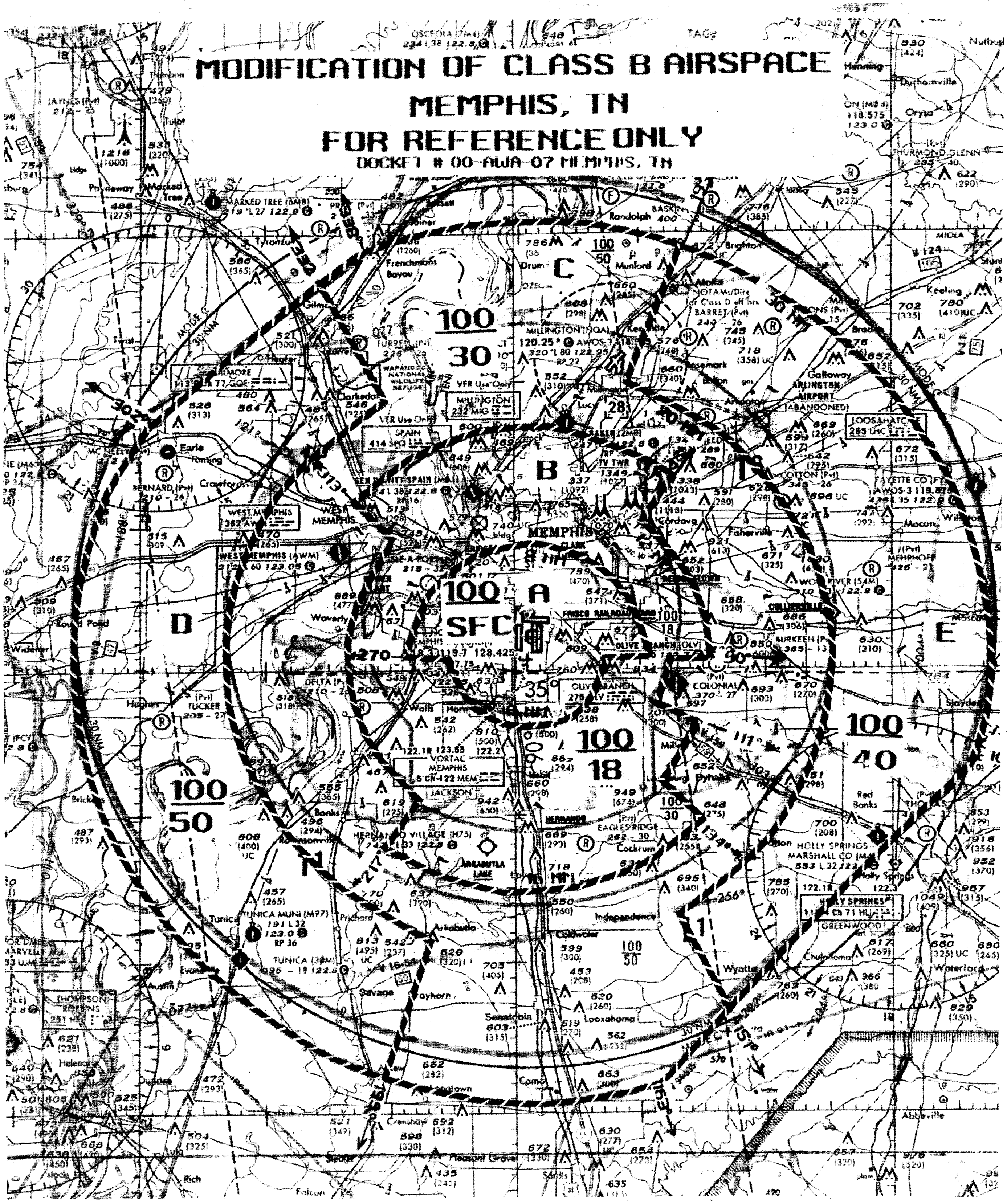
* * * * *

Issued in Washington, DC, on August 7, 2002.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

BILLING CODE 4910–13–C


MODIFICATION OF CLASS B AIRSPACE
MEMPHIS, TN
FOR REFERENCE ONLY

[FR Doc. 02–20764 Filed 8–14–02; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 5 and 16

[Docket No. 02N–0251]

Presiding Officers at Regulatory Hearings

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its administrative regulations governing who may act as a presiding officer at a regulatory hearing. This action amends the regulations to permit an administrative law judge (ALJ) to act as a presiding officer and provide the appropriate delegations of authority. FDA is taking this action to increase the pool of qualified personnel available as presiding officers, thereby increasing the efficiency with which the agency conducts regulatory hearings, beginning with responding to hearing requests and continuing through issuance of written hearing reports. Elsewhere in this issue of the **Federal Register**, FDA is publishing a companion proposed rule, under FDA's usual procedure for notice-and-comment rulemaking, to provide a procedural framework to finalize the rule in the event the agency receives any significant adverse comments and withdraws this direct final rule.

DATES: This rule is effective December 30, 2002. Submit written or electronic comments on or before October 29, 2002. If FDA receives no significant adverse comments within the specified comment period, the agency will publish a document confirming the effective date of the final rule in the **Federal Register** within 30 days after the comment period on this direct final rule ends. If timely significant adverse comments are received, the agency will publish a document in the **Federal Register** withdrawing this direct final rule before its effective date.

ADDRESSES: Submit written comments on the direct final rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Peter C. Beckerman, Office of the Chief Counsel (GCF–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7144.

SUPPLEMENTARY INFORMATION:

I. Discussion

FDA's procedures for a regulatory hearing are set forth in part 16 (21 CFR part 16) of the agency's regulations. ''Part 16 hearings'' are offered under numerous statutory and regulatory provisions. Section 16.1 provides a list of statutes and regulations in which part 16 hearings are available.

Currently § 16.42(a) provides that an FDA employee to whom the Commissioner of Food and Drugs (the Commissioner) delegates the authority, or any other FDA employee to whom such authority is redelegated, can serve as the presiding officer at a regulatory hearing. In turn, § 5.30(c) (21 CFR 5.30(c)) delegates authority to preside at and conduct a regulatory hearing to the Chief Mediator and Ombudsman for the Agency; the Directors and Deputy Directors of the Center for Food Safety and Applied Nutrition, the Center for Drug Evaluation and Research, the Center for Devices and Radiological Health, and the Center for Biologics Evaluation Research; Regional Directors; District Directors; the Director of the St. Louis Branch; and such other FDA official as the Commissioner may designate by memorandum in the proceeding.

FDA believes that the addition of the ALJ to the list of those delegated to conduct regulatory hearings would increase the pool of qualified personnel available to preside at regulatory hearings. In addition, by virtue of the nature of an ALJ's training and experience adjudicating disputes, FDA believes that an ALJ would be appropriately suited to conduct regulatory hearings. Therefore, the agency is amending §§ 5.30(c) and 16.42(a) to permit an ALJ to preside at and conduct regulatory hearings before the agency.

The regulations pertaining to ALJs issued by the Office of Personnel Management (OPM) (5 CFR 930.209(b)), provide that an agency may assign an ALJ, by detail or otherwise, to perform duties that are not the duties of an ALJ without prior approval by OPM when the duties are not inconsistent with the duties and responsibilities of an ALJ, the assignment is not to last longer than 120 days; and the ALJ has not had an aggregate of more than 120 days of such assignments or details in the preceding year. However, OPM's regulations under 5 CFR 930.209(c) also state that on a showing that it is in the public interest, OPM may authorize a waiver from the 120-day limitation.

For the reasons already discussed, FDA believes it would be in the public interest to permit an ALJ to preside at and conduct part 16 hearings.

II. Direct Final Rulemaking

FDA has determined that the subject of this rulemaking is suitable for a direct final rule. This direct final rule revises §§ 5.30(c) and 16.42(a) to permit an ALJ to preside at and conduct regulatory hearings before the agency. The action taken should be noncontroversial, and the agency does not anticipate receiving any significant adverse comment on this rule.

If FDA does not receive significant adverse comment by October 29, 2002, the agency will publish a document in the **Federal Register** before November 28, 2002, confirming the effective date of the final rule. The agency intends to make the direct final rule effective 30 days after publication of the confirmation document in the **Federal Register**. A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment recommending a rule change in addition to this rule will not be considered a significant adverse comment unless the comment also states why this rule would be ineffective without the additional change. If timely significant adverse comments are received, the agency will publish a document in the **Federal Register** withdrawing this direct final rule before November 28, 2002.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a companion proposed rule, identical to the direct final rule, that provides a procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of significant adverse comment. The comment period for the direct final rule runs concurrently with that of the companion proposed rule. Any comments received under the companion proposed rule will be treated as comments regarding the direct final rule. FDA will not provide additional opportunity for comment on the companion proposed rule. A full description of FDA's policy on direct final rule procedures may be found in a guidance document published in the **Federal Register** of November 21, 1997 (62 FR 62466).

III. Legal Authority

The broad rulemaking authority conferred on FDA by the U.S. Congress under the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 201 *et seq.*) permits the agency to amend its regulations as contemplated by this direct final rule. Section 701(a) of the act (21 U.S.C. 371(a)) gives FDA general rulemaking authority to issue regulations for efficient enforcement of the act.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this rule is consistent with the regulatory philosophy and principles identified in the Executive order and in the other two statutes. This rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. The agency has considered the effect that this rule would have on small entities. Because the rule will amend only internal agency procedures, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore under the Regulatory Flexibility Act, no further analysis is required.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531) requires that agencies prepare a written statement of anticipated costs and benefits before issuing any proposed or final rule ''that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year * * *.'' This final rule imposes no Federal mandate that will result in such an expenditure. Therefore, FDA is not required to prepare a cost/benefit statement.

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

VII. Paperwork Reduction Act of 1995

This direct final rule does not require information collection. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VIII. Request for Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written comments regarding this rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

21 CFR Part 16

Administrative practice and procedure.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 5 and 16 are amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATIONS

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2 605; 7 U.S.C. 138a, 2217; 15 U.S.C. 638, 1261–1282, 1451–1461, 3701–3711a; 21 U.S.C. 61–63, 141–149, 301–394, 467f, 679(b), 801–886, 1031–1309, 1401–1403; 35 U.S.C. 156; 42 U.S.C. 238, 241, 242, 242a, 242l, 242n, 242o, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1, 300ar–25–28, 300cc, 300ff, 1395y, 4332, 4831(a), 10007–10008; E.O. 11921, 41 FR 24294, 3 CFR, 1977 Comp., p. 124–131; E.O. 12591, 52 FR 13414, 3 CFR, 1988 Comp., p. 220–223.

2. In § 5.28 revise paragraph (c)(1), redesignate paragraph (c)(10) as paragraph (c)(11), and add new paragraph (c)(10) to read as follows:

§ 5.28 Hearings.

* * * * *

(c) * * *

(1) The Director, Office of the Ombudsman, Office of External Relations, Office of the Commissioner.

* * * * *

(10) An Administrative Law Judge.

* * * * *

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

3. The authority citation for 21 CFR part 16 continues to read as follows:

Authority: 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201–262, 263b, 364.

4. Amend § 16.42 by revising paragraph (a) to read as follows:

§ 16.42 Presiding officer.

(a) An FDA employee to whom the Commissioner delegates such authority, or any other agency employee designated by an employee to whom such authority is delegated, or, consistent with 5 CFR 930.209(b) or (c), an administrative law judge to whom such authority is delegated, may serve as the presiding officer and conduct a regulatory hearing under this part.

* * * * *

Dated: August 7, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–20701 Filed 8–14–02; 8:45 am]

BILLING CODE 4160–01–S

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in September 2002. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

EFFECTIVE DATE: September 1, 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to part 4022).

Accordingly, this amendment (1) adds to Appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during September 2002, (2) adds to Appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during September 2002, and (3) adds to Appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during September 2002.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 5.40 percent for the first 25 years following the valuation date and 4.25 percent thereafter. These interest assumptions represent a decrease (from those in effect for August 2002) of 0.10 percent for the first 25 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 4.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions are unchanged from those in effect for August 2002.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during September 2002, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In appendix B to part 4022, Rate Set 107, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
107	9–1–02	10–1–02	4.25	4.00	4.00	4.00	7	8

3. In appendix C to part 4022, Rate Set 107, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
107	9–1–02	10–1–02	4.25	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	
September 2002	.0540	1–25	.0425	25	N/A	N/A

Issued in Washington, DC, on this 8th day of August 2002.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 02–20702 Filed 8–14–02; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–02–052]

RIN 2115–AE46

Special Local Regulations for Marine Events; Atlantic Ocean, Point Pleasant Beach to Bay Head, NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the ''OPA–SBI–NJOPRA National Grand Prix'', a marine event to be held on the waters of the Atlantic Ocean between Point Pleasant Beach and Bay Head, New Jersey. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the regulated area during the event.

DATES: This rule is effective from 10:30 a.m. to 4:30 p.m. (local time) on August 16, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD05–02–052 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. In keeping with 5 U.S.C. 553(b)(B) and 553(d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The event will be held on August 16, 2002. There is not sufficient time to allow for an appropriate notice and comment period, prior to the event. Because of the danger inherent in high-speed boat races, special local regulations are necessary to provide for the safety of participants, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. In addition, advance notifications will be made via the Local Notice to Mariners, marine information broadcasts, and area newspapers.

Background and Purpose

On August 16, 2002, the Offshore Performance Association will sponsor the OPA–SBI–NJOPRA National Grand Prix. The event will consist of 40 to 45 offshore power boats racing along an oval course on the waters of the Atlantic Ocean. A fleet of spectator vessels is expected to gather near the event site to view the competition. To provide for the safety of participants, spectators and

other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the races.

Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters of the Atlantic Ocean and the Manasquan River. The temporary special local regulations will be enforced from 10:30 a.m. to 4:30 p.m. (local time) on August 16, 2002. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. The Patrol Commander will allow non-participating vessels to transit the regulated area between races. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Although this rule prevents traffic from transiting portions of the Atlantic Ocean and Manasquan River during the event, the effect of this rule will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly. Additionally, vessel traffic will be allowed to transit through the regulated area between races.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of the Atlantic Ocean and Manasquan River during the event.

Although this rule prevents traffic from transiting portions of the Atlantic Ocean and Manasquan River during the event, the effect of this rule will not be significant because of the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, vessel traffic will be allowed to transit through the regulated area between races.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.**

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial and direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect

on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(h), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade are specifically excluded from further analysis and documentation under that section. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. From 10:30 a.m. to 4:30 p.m. (local time) on August 16, 2002, add temporary section, § 100.35–T05–052 to read as follows:

§ 100.35–T05–052 Atlantic Ocean, Point Pleasant Beach to Bay Head, New Jersey

(a) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Atlantic City.

(b) *Regulated area.* The regulated area is defined as all waters of the Manasquan River from the New York and Long Branch Railroad to Manasquan Inlet, together with all waters of the Atlantic Ocean bounded by a line drawn from the end of the South Manasquan Inlet Jetty, easterly to Manasquan Inlet Lighted Buoy ''2M'', then southerly to a position at latitude 40° 04′ 26″N, longitude 074° 01′ 30″W, then westerly to the shoreline. All coordinates reference Datum NAD 1983.

(c) *Special local regulations* (1) The regulated area shall be closed intermittently to general navigation during the effective period. No person or vessel may enter or remain in the regulated area while it is closed unless participating in the event or authorized by the sponsor or regatta patrol personnel. Notice of the closure times will be given via Marine Safety Radio Broadcast on VHF–FM marine band radio, Channel 22 (157.1 MHz).

(2) All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators.

(3) The spectator fleet shall be held in a spectator anchorage area north of the regulated area, which shall be marked by patrol vessels flying pennants to aid in their identification.

(4) No vessel shall proceed at a speed greater than six (6) knots while in Manasquan Inlet during the effective period.

(5) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. The operator of a vessel in the regulated area shall stop the vessel immediately when instructed to do so by U.S. Coast Guard patrol personnel and then proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard.

(d) *Effective period.* This section is effective from 10:30 a.m. to 4:30 p.m. (local time) on August 16, 2002.

Dated: August 6, 2002.

James D. Hull,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 02–20754 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–181]

RIN 2115–AE84 and 2115–AA97

Regulated Navigation Area and Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; change in effective period.

SUMMARY: The Coast Guard is extending the effective period of the Regulated Navigation Area (RNA) and Safety and Security Zones published October 10, 2001. This change will extend the effective period of the temporary final rule until December 31, 2002 to allow additional time to develop a permanent rule. This rule will continue to prohibit vessels from entering certain areas of the port and impose restrictions on vessel operations in other areas.

DATES: §§ 165.T01–165 and 165.T01–166 are amended effective August 15, 2002, and remain in effect through December 31, 2002.

ADDRESSES: Documents as indicated in this preamble are available for inspection and copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander E. Morton, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On October 10, 2001, we published a temporary final rule (TFR) entitled ''Regulated Navigation Area and Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone'' in the **Federal Register** (66 FR 51558–51562). The effective period for this rule was from September 28, 2001, through April 8, 2002. Although the rule was published without advance notice of proposed rulemaking, an opportunity for public comment was provided. The comment period closed on December 10, 2001. The Coast Guard received no letters commenting on the temporary rule. No public hearing was requested, and none was held.

Subsequently, the effective period of the rule was extended to August 15, 2002 (67 FR 16016–16018, April 4, 2002). We anticipated that the extension would provide sufficient time to develop permanent security zones within the port by informal rulemaking. Agency development of a permanent rule required more time than had been estimated and prevented informal notice and comment rulemaking within the period originally forecast.

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3), the Coast Guard finds that good cause exists for not publishing an NPRM. The original TFR was urgently required to facilitate emergency services responding to terrorist attacks upon the World Trade Center in Manhattan, NY, and to prevent future terrorist strikes within and adjacent to the Port of New York/New Jersey. Those security considerations persist. We have determined that the public interest necessitates continued security regulations within the port while the

Coast Guard engages in informal rulemaking.

We consider additional notice and comment unnecessary for the extension of this temporary rule. The regulation imposes minimal, if any, burden on the maritime public as evidenced by the lack of response to the previous solicitation for comments. It does not interfere with the needs of navigation within the port; rather, it simply prevents vessels from entering relatively small areas of water adjacent to sensitive facilities. Moreover, as part of an ongoing assessment of the port security environment, the Captain of the Port relaxes or suspends enforcement of some of the restrictions permitted by the regulation. Any mitigation in the enforcement posture is broadcast to ensure widest dissemination to the maritime public.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This revision preserves the status quo within the Port while permanent rules are developed. The present TFR has not been burdensome on the maritime public. The public was invited to comment upon or suggest modifications to the scope of the existing TFR by submitting written comments within 60 days of its publication in the **Federal Register**. None were received. Any delay in the effective date of this regulation is unnecessary and contrary to the public interest.

Background and Purpose

Terrorist attacks against the World Trade Center in Manhattan, New York on September 11, 2001 inflicted catastrophic human casualties and property damage. Federal, state and local personnel are engaged in ongoing efforts to secure other potential terrorist targets from attack. The Coast Guard established RNAs and safety and security zones within defined areas of water in order to facilitate emergency response and rescue activities, protect human life, and safeguard vessels and waterfront facilities from sabotage or terrorist attacks.

These regulations were designed to provide the Captain of the Port of New York with maximum flexibility to respond to emergent threats and dangerous conditions. When less stringent security measures are required, the Captain of the Port communicates relaxed enforcement policies to the public. As a result, the full scope of these regulations is rarely imposed. Nevertheless, the flexibility to utilize those measures permitted by the TFR and required by the circumstances is vital to ensure port security in the present security environment.

The temporary rule is only effective until August 15, 2002. The Coast Guard is extending the effective date of this rule until December 31, 2002, to allow the establishment of permanent safety and security zones by notice and comment rulemaking.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12886, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the sizes of the zones are the minimum necessary to provide adequate protection for the public, vessels, and vessel crews. Any vessels seeking entry into or movement within the safety and security zones must request permission from the Captain of the Port or his authorized patrol representative. Any hardships experienced by persons or vessels are considered minimal compared to the national interest protecting the public, vessels, and vessel crews from the further devastating consequences of the aforementioned acts of terrorism, and from potential future sabotage or other subversive acts, accidents, or other causes of a similar nature.

The Coast Guard will be publishing a NPRM to establish permanent safety and security zones that are temporarily effective under this rule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard expects the impact of this regulation to be minimal and certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this final rule will not have a significant economic impact on a substantial number of small entities. Maritime advisories will be initiated by normal methods and means and will be widely available to users of the area.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander E. Morton, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

Small Businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of

$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that Order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security Measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Revise temporary § 165.T01–165(c) to read as follows:

§ 165.T01–165 Regulated Navigation Area: New York Marine Inspection Zone and Captain of the Port Zone.

* * * * *

(c) *Effective dates.* This section is effective from September 28, 2001 through December 31, 2002.

* * * * *

3. Revise temporary § 165.T01–166(b) to read as follows:

§ 165.T01–166 Safety and Security Zones: New York Marine Inspection Zone and Captain of the Port Zone.

* * * * *

(b) *Effective dates.* This section is effective from September 28, 2001 through December 31, 2002.

* * * * *

Dated: August 8, 2002.

V.S. Crea,

Rear Admiral, Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–20625 Filed 8–12–02; 3:42 pm]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY 125–200233(a); FRL–7259–7]

Approval and Promulgation of Implementation Plans for Kentucky: Regulatory Limit on Potential To Emit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency is conditionally approving a revision to the State Implementation Plan (SIP) of the Commonwealth of Kentucky incorporating Kentucky rule 401 KAR 50:080. This rule affects sources whose actual emissions are 50 percent or less of the major source threshold whereas the sources' potential to emit (PTE) exceeds the major source threshold.

DATES: This direct final rule is effective October 15, 2002, without further notice, unless EPA receives adverse comment by September 16, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Michele Notarianni, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. (404/562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail)).

Copies of the Commonwealth's submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. (Michele Notarianni, 404/562–9031, *notarianni.michele@epa.gov*)

Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403. (502/573–3382)

FOR FURTHER INFORMATION CONTACT: Michele Notarianni at address listed above or 404–562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Today's Action

The EPA is conditionally approving into the Kentucky SIP rule 401 KAR 52:080, ''Regulatory Limit on Potential to Emit'', based upon the Agency's understanding of Kentucky's interpretation of this regulation and Kentucky's commitment to clarify sections 2(3) and 4 of the rule within one year. In a letter to EPA dated April 18, 2002, the Commonwealth outlined its interpretation of the rule and provided a promulgation schedule for

clarifying these two sections by March 1, 2003.

II. Background

Kentucky adopted 401 KAR 50:031 (later amended and recodified to 401 KAR 50:080) in February 1996. This regulation was developed under EPA's title V Transition Policy, which allows states to defer the permitting of sources whose actual emissions are 50 percent or less of the major source threshold. EPA received a letter on July 10, 2001, from Kentucky requesting approval of 401 KAR 52:080 (and four other rules) into the Kentucky SIP.

EPA is conditionally approving this revision to 401 KAR 52:080 based on the Agency's understanding of the Commonwealth of Kentucky's interpretation of this regulation, documented in a letter dated April 18, 2002. In this letter, the Commonwealth noted Section 1(a) does *not* allow a source currently covered under this regulation to increase its actual emissions above 50 percent of a major source threshold under title V of the Clean Air Act by increasing its throughput or hours of operation. If a covered source increased its actual emissions above 50 percent, the source would be immediately subject to title V permitting requirements and violating 401 KAR 52:080 and the applicable permit regulation (*i.e.*, either 401 KAR 51:020 or 401 KAR 52:030).

III. Future Rule Clarifications

The Commonwealth also committed in the April 18, 2002, letter to clarify language in sections 2(3) and (4) during a regulatory amendment according to a projected promulgation schedule included with the letter.

Clarifications to section 2(3) will address the criteria for a source to receive a notice of violation (NOV) for noncompliance with the rule. Because issuance of NOVs is discretionary, a source's actual emissions could potentially exceed 50 percent of a major source threshold, but the source may not necessarily receive an NOV if the exceedance is considered temporary and not repeatable. Thus, the requirement to submit an application for a title V permit may not be triggered. This issue will be addressed.

Clarifications to section 2(3) will also address an issue of enforceability. The Commonwealth has a law prohibiting it from being more stringent than federal rules. If a source receives a NOV for actual emissions exceeding 50 percent of a major source threshold, section 2(3) sets a six month limit for a source to submit a title V application, rather than 12 months as required under part 70.

Sections 2(3) and 4 will be clarified to address reporting exceedances of the 50 percent limit. The rule currently does not require such exceedances to be reported. While section 11 requires covered sources to annually certify and submit an emissions inventory report, a source could potentially violate the rule within the first month after the required annual certification report is submitted, allowing 11 months to pass without the permitting authority knowing the source violated the rule. Further, clarifications to section 4 will address the possibility of a source increasing its actual emissions over the 50 percent threshold without a modification or reconstruction. A source may, for example, increase emissions through better ways to estimate emissions or conduct a stack test. However, no requirement exists to report an increase over the 50 percent threshold. The reporting requirement in section 4(2) to notify the permitting authority and submit a permit application is triggered only if a source is making a modification or reconstruction.

IV. Effects of This Action

Approximately 60–70 sources in Kentucky meet the requirements of and are complying with 401 KAR 52:080. These sources will not have to apply for and receive a title V permit should this rule be approved into the Kentucky SIP. Section 1(a) of 401 KAR 52:080 states that the rule applies only to sources ''whose actual emissions during any consecutive twelve (12) month period of operation after January 1, 1996, are less than fifty (50) percent of the major source threshold for Title V.''

V. Final Action

The EPA is conditionally approving Kentucky regulation 401 KAR 50:080 into the Kentucky SIP. If clarifications to the rule are not completed one year from the effective date of this notice, the EPA will publish a disapproval notice for this regulation.

EPA is approving the aforementioned changes to the SIP. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective October 15, 2002, without further notice unless the Agency receives adverse comments by September 16, 2002.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 15, 2002, and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 15, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart S—Kentucky

2. A new § 52.919 is added to read as follows:

§ 52.919 Identification of plan-conditional approval.

EPA is conditionally approving Rule 401 KAR 50:080, ''Regulatory Limit on Potential to Emit,'' effective January 15, 2001, into the Kentucky SIP contingent on the Commonwealth clarifying language in sections 2(3) and (4) according to a projected promulgation schedule committed to in a letter dated April 18, 2002, from the Commonwealth of Kentucky to EPA Region 4.

[FR Doc. 02–20747 Filed 8–14–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–85–1–200107a; FRL–7259–6]

Approval and Promulgation of Implementation Plans; Florida: Approval of Revisions to the Florida State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Florida State Implementation Plan (SIP) submitted on August 29, 2000, by the State of Florida through the Florida Department of Environmental Protection (FDEP). This submittal consists of revisions to the ozone air quality maintenance plan for the Tampa area (Hillsborough and Pinellas Counties) to remove the emission reduction credits attributable to the Motor Vehicle Inspection Program (MVIP) from the future year emission projections contained in those plans. This revision updates the control strategy for the Tampa maintenance area by removing emissions credit for the MVIP, and as such, transportation conformity must be redetermined by the Metropolitan Planning Organizations (MPOs) within 18 months of the final approval of this document.

DATES: This direct final rule is effective October 15, 2002, without further notice, unless EPA receives relevant adverse comment by September 16, 2002. If relevant adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to Joey LeVasseur at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur at 404/562–9035 (e-mail: *levasseur.joey@epa.gov).*

SUPPLEMENTARY INFORMATION: The following sections: Background, Analysis of the State's Submittal, and Final action, provide additional information concerning the revision to the ozone air quality maintenance plan for the Tampa area to remove the emission reduction credits attributable to the MVIP from the future year emission projections contained in that plan.

I. Background

Upon enactment of the Clean Air Act Amendments of 1990, the Tampa, Florida area was designated as nonattainment for the one-hour ozone national ambient air quality standard (NAAQS) and classified as marginal. On November 16, 1992, the State of Florida submitted comprehensive inventories for volatile organic compound (VOC), oxides of nitrogen (NO_X), and carbon monoxide emissions from the Tampa area. The inventories include biogenic,

area, stationary, and mobile source emissions using 1990 as the base year for calculations to demonstrate NAAQS attainment and maintenance. The 1990 inventory is considered representative of attainment conditions because the one-hour ozone NAAQS was not violated during 1990. By 1993, the Tampa area was able to demonstrate attainment of the one-hour ozone NAAQS and was able to show compliance with other requirements of the Clean Air Act as amended in 1990 (CAA) for redesignation.

On February 7, 1995, the State of Florida through the FDEP requested that the Tampa area be redesignated from a marginal ozone nonattainment area to attainment. The approval of the ozone maintenance plan into the SIP, in conjunction with EPA's redesignation of the area to attainment with respect to the 1-hour ozone NAAQS, was published on December 7, 1995 (60 FR 62748), and became effective on February 5, 1996 (40 CFR 81.310).

The ozone maintenance plan for the area, developed pursuant to section 175A of the CAA and approved in the SIP, accounted for the MVIP in the mobile source emissions projections. The MVIP was a centralized basic inspection and maintenance program. The program utilized an idle emissions test to monitor vehicles' emission compliance. Due to the fact that the Tampa area was marginal, the MVIP was a voluntary program and was not required by the CAA.

II. Analysis of State's Submittal

On August 29, 2000, the FDEP submitted a revision to the SIP for the ozone air quality maintenance plan for the Tampa, Florida, area to remove the emission reduction credits attributable to the MVIP from the future year emission projections contained in that plan. Specifically this action involves a recalculation of the motor vehicle emissions budgets (budgets) for the area using the MOBILE5b model and eliminating the credit for the MVIP. The FDEP is requesting approval of amendments to the Tampa Bay maintenance plan to provide explicit transportation conformity budgets for Hillsborough and Pinellas counties. In the current maintenance plan, no budgets are specified; hence, the original year 2005 mobile source emissions projections that were made by each county are being used as transportation conformity budgets by default. The conformity process will be clarified by the establishment of specific budgets for each county in this revised maintenance plan.

The Transportation Conformity regulations, promulgated on November 24, 1993, established the criteria and procedures for determining conformity of transportation activities to the SIP. Under these provisions and Title I of the CAA, states may revise their emissions budgets at any time through the standard SIP revision process, provided that the revised emissions budgets will not adversely affect attainment and maintenance of the ozone NAAQS for any milestone year in the required time frame. The conformity rule provides states with the option to revise the emissions budgets to reallocate emissions among sources or between pollutants and their precursors so long as this budget maintains total emissions for the area below the attainment inventory levels.

In addition, the SIP revision must not have an adverse impact on maintenance of the NAAQS for any criteria pollutant. Guidance on this issue is contained in a memorandum dated September 17, 1993, from Michael Shapiro, Acting Assistant Administrator for Air and Radiation entitled, ''State Implementation Plan Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide National Ambient Air Quality Standards on or after November 15, 1992.'' This memo states:

As a general policy, a State may not relax the adopted and implemented SIP upon the area's redesignation to attainment. States should continue to implement existing control strategies in order to maintain the standard. However, section 175A recognizes that States may be able to move SIP measures to the contingency plan upon redesignation if the State can adequately demonstrate that such action will not interfere with maintenance of the standard.

The following table contains the projected emission levels taking into account the removal of the MVIP.

TOTAL 2.—COUNTY (HILLSBOROUGH AND PINELLAS COUNTIES) EMISSIONS INVENTORY SUMMARY

[Tons per day]

Category	VOC			NO_X		
	1990	2000	2005	1990	2000	2005
Stationary Point	17.69	21.49	21.49	319.74	190.17	107.25
Stationary Area	100.19	114.34	120.13	9.99	11.48	12.08
On-Road Mobile	158.50	86.30	85.10	121.50	101.00	95.70
Non-Road Mobile	51.14	46.64	39.07	58.53	71.55	71.35
Biogenic	194.70	194.70	194.70	1.80	1.80	1.80
Total	522.22	463.47	460.49	511.56	376.00	288.18

The next table shows the projected 2005 VOC and NO_X emissions with and without the MVIP.

TAMPA FLORIDA AREA—PROJECTED 2005 MOBILE SOURCE EMISSIONS

[Tons per day]

County	With MVIP		Without MVIP	
	VOC	NO_X	VOC	NO_X
Hillsborough County	42.3	55.8	47.4	56.8
Pinellas County	33.5	38.2	37.7	38.9
Total	75.8	93.9	85.1	95.7

The projected emissions for on road mobile sources continue to be less than the level of emissions in 1990, a year for which the area was in attainment. Therefore Florida has demonstrated that the area can maintain the one-hour ozone NAAQS without the implementation of the MVIP. The EPA has reviewed the State's emissions inventory and modeling analyses and finds that they meet applicable guidance and requirements. Therefore, the State has made the necessary demonstration that the MVIP is not necessary to maintain the one-hour ozone NAAQS and that attainment of the NAAQS for any other pollutant will not be affected by removing the MVIP from the SIP. In accordance with EPA's November 15, 1992, policy, the State must include the MVIP as a contingency measure in the maintenance plan for the redesignated area, which it has done.

The following table lists the revised budgets for each county. The motor vehicle emission budgets are derived as a percentage of the 1990 on road emissions inventories. Upon final EPA approval, these budgets are to be used by the local metropolitan planning organizations and transportation authorities to assure that transportation plans, programs, and projects are consistent with, and conform to, the long-term maintenance of the NAAQS in the Tampa area.

The State is allowed to allocate up to 100 percent of the 1990 on-road emissions inventory for use as the motor vehicle emissions budget. Pursuant to 40 CFR part 51, subpart T, the Transportation Conformity rule, § 51.456(b), a specific emissions budget is here defined for the on-road mobile sources portion of the emissions inventory. These budgets are to be used by the local MPOs and transportation authorities to assure that transportation plans, programs, and projects are consistent with, and conform to, the long-term maintenance of acceptable air quality in the Tampa Bay area. Specific emissions budgets are set for VOC and NO_X in the following table.

TAMPA FLORIDA AREA—MOTOR VEHICLE EMISSIONS BUDGET

[Tons per day]

County	VOC	NO_X
Hillsborough County	54.05	71.24
Pinellas County	33.38	42.01
Total	87.43	113.25

The local MPOs must redetermine conformity within 18 months of the effective date for this SIP revision. This is required because the existing conformity determinations considered emission reduction credits from the MVIP control strategy.

Final Action

EPA is approving the aforementioned changes to the SIP. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective October 15, 2002, without further notice unless the Agency receives adverse comments by September 16, 2002.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 15, 2002, and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for

failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 15, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations* is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart K—Florida

2. Section 52.520 paragraph (e) is amended by adding a new entry at the end of the table to read as follows:

§ 52.520 Identification of plan.

* * * * *

(e) EPA-approved Florida non-regulatory provisions.

Provision	State effective date	EPA approval date	Federal Register notice	Explanation
* *	*	*	* *	*
Revision to Maintenance Plan for the Tampa, Florida Area.	July 9, 2000	August 15, 2002	[Insert cite of publication].	

[FR Doc. 02–20745 Filed 8–14–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7258–6]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final notice of deletion of Operable Unit (OU) No. 2 of the Tex Tin Corporation Superfund site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is publishing a direct final notice of deletion of OU No. 2 of the Tex Tin Superfund site, located in Texas City, Galveston County, Texas, from the National Priorities List (NPL).

The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final notice of deletion is being published by EPA with the concurrence of the State of Texas, through the Texas Natural Resource Conservation Commission (TNRCC), because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate.

DATES: This direct final deletion will be effective October 15, 2002, unless EPA receives adverse comments by September 16, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Comments may be mailed to: Donn Walters, Community Relations Coordinator U.S. EPA (6SF–P), 1445 Ross Avenue, Dallas, Texas, 75202–2733. Comments can also be sent by e-mail to: *walters.donn@epa.gov.*

Information Repositories: Comprehensive information about the Tex Tin Superfund site is available for viewing and copying at the information repositories located at: U.S. Environmental Protection Agency Region 6, 12th Floor Library, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6427, Monday through Friday 7:30 am to 4:30 pm; Moore Memorial Public Library, 1701 Ninth Avenue North, Texas City, Texas 77590, (409) 643–5979, Monday through Wednesday 9 am to 9 pm, Thursday and Friday 9 am to 6 pm, Saturday 10 am to 4 pm; Texas Natural Resource Conservation Commission, Building D, Record Management, Room 190, 12100 North Interstate Highway 35, Austin, Texas 78753, (512) 239–2920, Monday through Friday 8 a.m to 5 pm.

FOR FURTHER INFORMATION CONTACT: Carlos A. Sanchez, Remedial Project Manager (RPM) (6SF–A), EPA Region 6, 1445 Ross Avenue—Suite 1200, Dallas, Texas, 75202–2733, (214) 665–8507 or by e-mail, *sanchez.carlos@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA Region 6 is publishing this direct final notice of deletion of OU No. 2 of the Tex Tin Superfund site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective October 15, 2002, unless EPA receives adverse comments by September 16, 2002, on this notice or the parallel notice of intent to delete published in the Proposed Rules section of today's **Federal Register**. If adverse comments are received within the 30-day public comment period on this notice or the notice of intent to delete EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses OU No. 2 of the Tex Tin Superfund site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete OU No. 2 from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of OU No. 2:

(1) The EPA consulted with the State of Texas through the Texas Natural Resource Conservation Commission (TNRCC) on the deletion of the Tex Tin OU No. 2 site from the NPL prior to developing this direct final notice of deletion.

(2) The State of Texas through the TNRCC concurred with deletion of OU No. 2 from the NPL.

(3) Concurrently with the publication of this direct final notice of deletion, a notice of the availability of the parallel notice of intent to delete published today in the ''Proposed Rules'' section of the **Federal Register** is being published in a major local newspaper of general circulation at or near the Tex Tin OU No. 2 site and is being distributed to appropriate federal, state, and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the notice of intent to delete OU No. 2 from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the Tex Tin site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this notice or the companion notice of intent to delete also published in today's **Federal Register**, EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions. Additionally, deletion of the Tex Tin OU No. 2 site from the NPL will not alter BP Amoco's requirements under the Texas Voluntary Cleanup Program (Texas VCP).

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Tex Tin OU No. 2 site from the NPL:

Site Location

Operable Unit No. 2 of the Tex Tin Corporation Superfund site is located in Texas City, Galveston County, Texas, CERCLIS ID # TXD062113329. The former Tex Tin Corporation smelter facility, which at one time consisted of OU No. 1 and OU No. 2, is located in the southeast quadrant of the intersection of State Highway (SH) 146 and Farm-to-Market (FM) Road 519. The area north and east of the former smelter facility is dominated by large petrochemical facilities. There is a densely populated residential neighborhood approximately 2,000 feet west-northwest of the former facility in the city of La Marque, Texas. More than 10,000 people reside within a 1 mile radius of the former smelter facility. A municipal golf course, an industrial waste disposal facility, and marsh areas are located less than 0.5 mile to the south and southwest of the former facility.

Site History

The Tex Tin smelter was constructed by a corporation under contract to the United States government as an emergency tin supply plant for World War II, and operated under a government contract from 1941 to 1956 as the Tin Processing Corporation. The smelting operations were conducted in the areas currently referred to as OU No. 1 and OU No. 2. The facility was sold to private industry in 1957 and was operated by a succession of companies until it ceased operations in 1991.

From 1941 through 1989, the facility primarily produced tin. A secondary copper smelting process replaced the tin

smelting operations in 1989 and continued through 1991. In 1969, Amoco Chemical Company purchased approximately 27 acres of land (OU No. 2) from Wah Chang Corporation, owner of the smelter at that time.

EPA first proposed the Tex Tin site for inclusion on the NPL in 1988. The Court of Appeals for the D.C. Circuit ordered the site removed from the NPL in 1993. On June 17, 1996, EPA again proposed to add the Tex Tin Corporation site to the NPL of Superfund sites. 61 FR 30575 (June 17, 1996). The Tex Tin NPL listing became final on September 18, 1998. 63 FR 49855.

The Tex Tin Superfund site consists of four operable units. Primary and secondary tin and copper smelting operations were conducted in the area currently referred to as OU No. 1, which encompasses approximately 140 acres and includes ponds outside the fenced area. OU No. 3 is the La Marque residential area located approximately 2,000 feet west-northwest from the former smelter facility. OU No. 4 includes the Swan Lake ecosystem located between the hurricane levee and the shell barrier islands separating Swan Lake from Galveston Bay and portions of Swan Lake, its associated salt marsh habitats, and the Wah Chang ditch east of Loop 197. OU No. 2, the focus of this proposed direct deletion, encompasses approximately 27 acres, where unlined pits created for storage of waste acid solution from smelter operations were historically located. In April of 1996, Amoco applied to the Texas VCP to perform response activities on its property, OU No. 2. After consultation between EPA and TNRCC, Amoco was accepted into the VCP. EPA provided technical assistance to TNRCC in overseeing the Amoco response action.

Remedial Investigation and Feasibility Study (RI/FS)

Tex Tin OU No. 2 includes an area of approximately 27 acres that was part of the Tex Tin smelter facility until 1969, when the property was purchased by Amoco (now BP Amoco). OU No. 2 is referred to in the RI and other early reports as Area H. Area H included six (6) ponds (Ponds 9 through 14) that at one time were used to dispose of acidic ferrous-chloride waste solution from the tin smelting process. Beginning in 1969, when Amoco bought the property, the ponds were no longer used for disposal of smelter waste. In 1988 they were drained and backfilled by Amoco. OU No. 2 is currently part of Amoco's Plant C property, a total of approximately 71 undeveloped acres situated across FM 519 from the Amoco Refinery and the Amoco Chemical Plant in Texas City.

The RI conducted in 1992 for the Tex Tin site included OU No. 2. The RI found metal concentrations in the surface soils, near-surface soils, and fill material in the OU No. 2 area that exceeded health based levels. Arsenic and lead are the metals that were found at the highest concentrations and which contributed the highest health risk at OU No. 2. Lead as high as 3,505 mg/kg was detected in Pond 13 and arsenic as high as 2,537 mg/kg was detected in Pond 14.

Additional investigations for OU No. 2 were conducted in 1996 by KMA Environmental (now Meridian Alliance Group) for Amoco. Results of the investigations conducted by KMA are presented in the Surface Soils Response Action Work Plan and the Groundwater Response Action Work Plan which are included in the Response Action Work Plan dated October 1996. Test results found lead concentrations at 3,120 mg/kg, arsenic at 1,550 mg/kg, and chromium at 25.8 mg/kg.

Findings from KMA investigations and the RI indicated that contaminants were present at OU No. 2 that may pose a risk to human health and the environment. Because the extensive RI conducted in 1992 for the former smelter facility included both OU No. 1 and OU No. 2, the selection of contaminants of concern (COCs) and the preliminary remediation goals (PRGs) identified for OU No. 1 are applicable for OU No. 2. Likewise, soil and ground water remedies selected in the ROD for OU No. 1, for an industrial setting, are applicable to OU No. 2.

Record of Decision Findings

The United States Environmental Protection Agency (EPA) Region 6 signed a No Further Action Record of Decision (ROD) on September 27, 2001, for Operable Unit (OU) No. 2 (Amoco Property) of the Tex Tin Corporation Superfund site which is located in Texas City, Texas. The EPA based its decision on the results of the remedial investigation and human health risk assessment conducted for the Tex Tin site and the successful completion of a Response Action by Amoco Chemical Company (Amoco) (now known as BP Amoco Chemical Company) under the Texas Voluntary Cleanup Program (VCP) from November 1997 through June 1998. The EPA determined that the Amoco Response Action had eliminated the need to conduct further remedial action at OU No. 2 by addressing the human health risk associated with the high concentrations of arsenic and lead. The State of Texas concurred with the Record of Decision of No Further Action necessary under CERCLA.

Characterization of Risk

A human health risk assessment for OU No. 2 was conducted by KMA in 1996. The risk assessment results indicated that the risk associated with arsenic, lead, and chromium contamination in the surface soils exceeded allowable risks for industrial workers. The model identified the baseline (prior to response action) risk to site workers associated with contaminants found in OU No. 2 surface soils. The model indicated that the cancer risk was exceeded for industrial workers at the site. The calculated cancer risk for industrial workers was 2.04E–4 which exceeds EPA's acceptable risk range of one in ten thousand to one in one million (expressed as 1×10^{-4} to 1×10^{-6}) lifetime excess cancer incidents which is the remedial goal for Superfund sites.

The Remedial Action Objectives (RAOs) formulated for OU No. 1 contaminants that are also applicable to OU No. 2 consist of:

- Preventing direct contact, ingestion, and inhalation of contaminants that exceed PRGs.
- Preventing further degradation of the ground water outside the site boundaries in the shallow and medium transmissive zones.
- Preventing migration of contaminated ground water outside the site boundaries to the deep transmissive zone by addressing the site source materials and preventing further degradation of the shallow and medium transmissive zones.

Response Action

The Tex Tin OU No. 2 response action, conducted under the authority of the Texas Voluntary Cleanup Program, met EPA's CERCLA standards and the RAOs for OU No. 1 which are also applicable to OU No. 2. The implemented remedy for OU No. 2 included the following elements:

- Placement of a minimum 2-foot soil/vegetative cover over the entire OU No. 2 area (to prevent exposure to surface soil contaminants above health-based action levels found on portions of the property);
- Construction of a bentonite/soil (slurry) cutoff wall along the Amoco (OU No. 2) and Tex Tin (OU No. 1) property boundary to prevent further movement of the contaminated shallow ground water from OU No. 1 to OU No. 2;
- Initiation of a long-term ground water monitoring program and placing deed restrictions on the property to

prevent use of the ground water for purposes other than monitoring and remediation; and

• Filing deed restrictions to restrict site use for industrial purposes only and to notify potential users of the remaining site contaminants.

The response action taken at OU No. 2 by Amoco has eliminated the exposure pathway between human or environmental receptors and surface or subsurface contaminants by creating a permanent clean cover over the entire OU No. 2 property. Unacceptable levels of risk to industrial workers caused by exposure to hazardous substances at OU No. 2 have been abated by the VCP response action.

A comparison of the selected remedy for OU No. 1, which met the nine evaluation criteria used in selecting remedies for Superfund sites, with the remedy implemented for OU No. 2 under the Texas VCP indicates that the remedy for OU No. 2 is consistent with the remedy selected for OU No. 1.

Cleanup Standards

The cleanup standards or preliminary remedial goals (PRGs) identified for the former smelter facility (OU No. 1) are applicable for OU No. 2. The human health risk-based industrial PRG for arsenic was calculated at 194 mg/kg. The PRG for arsenic meets EPA's acceptable risk range of 1E–4 to 1E–6 and meets TNRCC's arsenic cleanup level of 200 mg/kg for an industrial site. The lead PRG of 2,000 mg/kg was based on Bower's model for adult lead exposure at an industrial setting. For the OU No. 2 contaminants of concern, only arsenic at 2,537 mg/kg and lead at 3,505 mg/kg exceeded the PRGs.

To determine the leaching potential of site contaminants to the site ground water, the Synthetic Precipitation Leaching Procedure (SPLP) test was conducted by Amoco for OU No. 2. The SPLP tests indicated that lead levels in surface soil as high as 3,120 mg/kg and arsenic levels in surface soils as high as 1,550 mg/kg would pass the SPLP test. The selected PRGs levels for arsenic and lead do not exceed the SPLP levels tested and would therefore be protective of the site ground water.

Operation and Maintenance

The long-term ground water monitoring program consists of:

• Sampling twenty-four (24) shallow and seven medium transmissive zone wells on a quarterly basis for the first two years, semi-annually for the next three years, and yearly thereafter;

• Establishing a compliance monitoring program at the limit of the contaminant plume boundary to ensure that no further migration of the contaminated shallow ground water is occurring. Samples will be collected from nine (9) shallow ground water wells quarterly for a minimum of two years. If no migration is indicated during the first two years, sampling will be conducted semi-annually for the next three years, and annually thereafter. If migration of the contaminated shallow ground water is indicated at the compliance monitoring locations, a proposed response action will be submitted to TNRCC and EPA in a Groundwater Monitoring Response Action Report.

Five-Year Review

Because the response action resulted in hazardous substances, pollutants, or contaminants remaining on-site above health-based levels, a review will be conducted to ensure that the remedy continues to provide adequate protection of human health and the environment within five years after commencement of the response action for OU No. 2 of the Tex Tin site. The response action began in October 1997; therefore, the first five year review for OU No. 2 will be scheduled for October 2002. Moreover, Amoco will continue the ground water monitoring program to verify that contaminants in the shallow transmissive zone are not migrating to the deep transmissive ground water zone that can potentially be used as a drinking water source. In addition, the Texas VCP will review site conditions on a semiannual basis to ensure compliance with the Conditional Certificate of Completion.

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the Administrative Record for the Tex Tin Superfund site which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories which can be found at the Moore Memorial Library located in Texas City, Texas, the EPA Region 6 library in Dallas, Texas, and the TNRCC library in Austin, Texas.

V. Deletion Action

The EPA, with concurrence of the State of Texas through the TNRCC, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA, other than O&M and five-year reviews, are necessary. Therefore, EPA is deleting OU No. 2 of the Tex Tin Superfund site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective October 15, 2002, unless EPA receives adverse comments by September 16, 2002, on a parallel notice of intent to delete published in the Proposed Rule section of today's **Federal Register**. If adverse comments are received within the 30-day public comment period on the proposal, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect and, EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: July 29, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended under the State of Texas (''TX'') by revising the entry for the ''Tex-Tin Corp.'' Superfund site and the city ''Texas City'' Texas to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes (a)
* * *	* *	*	*
TX	Tex Tin Superfund	Texas City, Galveston	P

P = Sites with partial deletion(s).

(a) * * *

[FR Doc. 02–20446 Filed 8–14–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010914227–2063–02; I.D. 080201E]

RIN 0648–AM40

Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the regulatory text of the final rule published on April 15, 2002. The final rule implemented Amendment 67 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

DATES: Effective August 14, 2002.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7008.

SUPPLEMENTARY INFORMATION: As published, the April 15, 2002 (67 FR 18129) final rule, which implements Amendment 67 to the FMP, contains a paragraph designation error and must be corrected.

Classification

The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment under the authority set forth at 5 U.S.C. 553(b)(3)(B). The rationale for this finding is that prior notice and comment are unnecessary under the Administrative Procedure Act because the correction of a paragraph designation will have no substantive effect on the regulated public. Prior notice and comment would be contrary to the public interest because it would prolong the inaccurate paragraph designation that currently exists in the regulations. Therefore, the Assistant Administrator for Fisheries, NOAA, waives the 30–day delay in effective date under 5 U.S.C. 553(d).

Correction

Accordingly, the publication on April 15, 2002 (67 FR 18129, FR Doc. 02–8961), is corrected as follows:

On page 18138, column 3, in § 679.4, paragraph (k)(9)(iii)(G), correct the paragraph designation ''679.4(k)(iii)(D)'' to read ''679.4(k)(9)(iii)(D)''.

Dated: August 9, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–20735 Filed 8–14–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 158
Thursday, August 15, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV02–920–4 PR]

Kiwifruit Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Kiwifruit Administrative Committee (Committee) for the 2002–03 and subsequent fiscal periods from $0.03 to $0.045 per 22-pound volume fill container or equivalent of kiwifruit. Expenses for 2002–03 are higher than last fiscal period and the current assessment rate would not generate enough funds to cover the expenses. The Committee locally administers the marketing order which regulates the handling of kiwifruit grown in California. Authorization to assess kiwifruit handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by September 16, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, e-mail: *moab.docketclerk@usda.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Marketing Assistant, or Rose M. Aguayo, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487–5901; Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938. Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California kiwifruit handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable kiwifruit beginning on August 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 2002–03 and subsequent fiscal periods from $0.03 to $0.045 per 22-pound volume fill container or equivalent of kiwifruit.

The California kiwifruit marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of California kiwifruit. They are familiar with the Committee's needs and the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2000–01 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on July 10, 2002, and unanimously recommended 2002–03 expenditures of $80,760 and an assessment rate of $0.045 per 22-pound volume fill container or equivalent of kiwifruit. In comparison, last year's budgeted expenditures were $78,000. The assessment rate of $0.045 is $0.015 higher than the rate currently in effect. The higher assessment rate is needed to offset the 2002–03 increase in salaries

and vehicle expenses, and to keep the operating reserve at an adequate level.

The following table compares major budget expenditures recommended by the Committee for the 2002–03 and 2001–02 fiscal periods:

Budget expense categories	2002–03	2001–02
Administrative Staff & Field Salaries	$55,500	$50,000
Travel	5,000	9,500
Office Costs/Annual Audit	14,500	14,500
Vehicle Expense Account	5,760	4,000

The assessment rate recommended by the Committee was derived by the following formula: Anticipated expenses ($80,760), plus the desired 2003 ending reserve ($36,287), minus the 2002 beginning reserve ($23,979), divided by the total estimated 2002–03 shipments (2,068,182 22-pound volume fill containers). This calculation resulted in the $0.045 assessment rate. This rate would provide sufficient funds to meet the anticipated expenses of $80,760 and result in a July 2003 ending reserve of $36,287, which is acceptable to the Committee. The July 2003 ending reserve funds (estimated to be $36,287) would be kept within the maximum permitted by the order, approximately one fiscal period's expenses (§ 920.41).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2002–03 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 326 producers of kiwifruit in the production area and approximately 52 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

None of the 52 handlers subject to regulation have annual kiwifruit sales of at least $5,000,000. Two of the 326 producers subject to regulation have annual sales of at least $750,000. Thus, the majority of handlers and producers of kiwifruit may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2002–03 and subsequent fiscal periods from $0.03 to $0.045 per 22-pound volume fill container or equivalent of kiwifruit. The Committee unanimously recommended 2002–03 expenditures of $80,760 and an assessment rate of $0.045 per 22-pound volume fill container or equivalent of kiwifruit. The proposed assessment rate of $0.045 is $0.015 higher than the 2001–02 rate. The quantity of assessable kiwifruit for the 2002–03 fiscal period is estimated at 2,068,182 22-pound volume fill container or equivalent of kiwifruit. Thus, the $0.045 rate should provide $93,068 in assessment income and be adequate to meet this year's expenses.

The following table compares major budget expenditures recommended by the Committee for the 2002–03 and 2001–02 fiscal years:

Budget expense categories	2002–03	2001–02
Administrative Staff & Field Salaries	$55,500	$50,000
Travel	5,000	9,500
Office Costs/Annual Audit	14,500	14,500
Vehicle Expense Account	5,760	4,000

The Committee reviewed and unanimously recommended 2002–03 expenditures of $80,760, which included increases in administrative salaries and vehicle expenses. Prior to arriving at this budget, the Committee considered alternative expenditure levels, but ultimately decided that the recommended levels were reasonable to properly administer the order. The assessment rate recommended by the Committee was derived by the following formula: Anticipated expenses ($80,760), plus the desired 2003 ending reserve ($36,287), minus the 2002 beginning reserve ($23,979), divided by the total estimated 2002–03 shipments (2,068,182 22-pound volume fill containers). This calculation resulted in the $0.045 assessment rate. This rate would provide sufficient funds to meet the anticipated expenses of $80,760 and result in a July 2003 ending reserve of $36,287, which is acceptable to the Committee. The July 2003 ending reserve funds (estimated to be $36,287) would be kept within the maximum permitted by the order, approximately one fiscal period's expenses (§ 920.41).

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2002–03 season could range between $9.50 and $13.00 per 22-pound volume fill container or equivalent of kiwifruit. Therefore, the estimated assessment revenue for the 2002–03 fiscal period as a percentage of total grower revenue could range between 0.5 and 0.3 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the California kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the July 10, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally,

interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large California kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2002–03 fiscal period begins on August 1, 2002, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable kiwifruit handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis and; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.

For the reasons set forth in the preamble, 7 CFR part 920 is proposed to be amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The Authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 920.213 is revised to read as follows:

§ 920.213 Assessment rate.

On and after August 1, 2002, an assessment rate of $0.045 per 22-pound volume fill container or equivalent of kiwifruit is established for kiwifruit grown in California.

Dated: August 8, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–20688 Filed 8–14–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 5 and 16

[Docket No. 02N–0251]

Presiding Officers at Regulatory Hearings

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its administrative regulations governing who may act as a presiding officer at a regulatory hearing. This action would amend the regulations to permit an administrative law judge (ALJ) to act as a presiding officer and provide the appropriate delegations of authority. It is intended to increase the pool of qualified personnel available as presiding officers, thereby increasing the efficiency with which the agency conducts regulatory hearings, beginning with responding to hearing requests and continuing through issuance of written hearing reports. This proposed rule is a companion document to the direct final rule published elsewhere in this issue of the **Federal Register**.

DATES: Submit written or electronic comments on the proposed rule on or before October 29, 2002. If FDA receives any significant adverse comments, the agency will publish a document withdrawing the direct final rule within 30 days after the comment period ends. FDA will then proceed to respond to comments under this proposed rule using the usual notice-and-comment procedures.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Peter C. Beckerman, Office of the Chief Counsel (GCF–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7144.

SUPPLEMENTARY INFORMATION:

I. Discussion

As described in the related direct final rule, FDA's procedures for a regulatory hearing are set forth in part 16 (21 CFR part 16) of the agency's regulations. ''Part 16 hearings'' are offered under numerous statutory and regulatory provisions. Section 16.1 provides a list of statutes and regulations in which part 16 hearings are available.

Currently, § 16.42(a) provides that an FDA employee to whom the Commissioner of Food and Drugs (the Commissioner) delegates the authority, or any other FDA employee to whom such authority is redelegated, can serve as the presiding officer at a regulatory hearing. In turn, § 5.30(c) (21 CFR 5.30(c)) delegates authority to preside at and conduct a regulatory hearing to the Director of the Office of the Ombudsman for the agency; the Directors and Deputy Directors of the Center for Food Safety and Applied Nutrition, the Center for Drug Evaluation and Research, the Center for Devices and Radiological Health, and the Center for Biologics Evaluation and Reasearch; Regional Directors; District Directors; the Director of the St. Louis Branch; and such other FDA official as the Commissioner may designate by memorandum in the proceeding.

FDA believes that the addition of the ALJ to the list of those delegated to conduct regulatory hearings would increase the pool of qualified personnel available to preside at regulatory hearings. In addition, by virtue of the nature of an ALJ's training and experience adjudicating disputes, FDA believes that an ALJ would be appropriately suited to conduct regulatory hearings. Therefore, the agency is proposing to amend §§ 5.30(c) and 16.42(a) to permit an ALJ to preside at and conduct regulatory hearings before the agency.

The regulations pertaining to ALJs issued by the Office of Personnel Management (OPM) (5 CFR 930.209(b)) provide that an agency may assign an ALJ, by detail or otherwise, to perform duties that are not the duties of an ALJ without prior approval by OPM when the duties are not inconsistent with the duties and responsibilities of an ALJ, the assignment is not to last longer than 120 days; and the ALJ has not had an aggregate of more than 120 days of such assignments or details in the preceding year. However, OPM's regulations under 5 CFR 930.209(c) also state that on a showing that it is in the public interest, OPM may authorize a waiver from the 120-day limitation.

For the reasons already discussed, FDA believes it would be in the public interest to permit an ALJ to preside at and conduct part 16 hearings.

II. Additional Information

This proposed rule is a companion to the direct final rule published in the final rules section of this issue of the **Federal Register**. This companion proposed rule and the direct final rule are identical. This companion proposed rule will provide the procedural framework to finalize the rule in the event the direct final rule receives significant adverse comments and is withdrawn. The comment period for this companion proposed rule runs concurrently with the comment period of the direct final rule. Any comments received under the companion proposed rule will be treated as comments regarding the direct final rule. If no significant adverse comment is received in response to the direct final rule, no further action will be taken related to this proposed rule. Instead, FDA will publish a confirmation document within 30 days after the comment period ends, and FDA intends the direct final rule to become effective 30 days after publication of the confirmation document. If FDA receives significant adverse comments, the agency will withdraw the direct final rule. FDA will proceed to respond to all the comments received regarding the rule, and if appropriate, the rule will be finalized under this companion proposed rule using usual notice-and-comment procedures.

For additional information, see the corresponding direct final rule published in the final rules section of this issue of the **Federal Register**. FDA will not provide additional opportunity for comment. A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment recommending a rule change in addition to this rule will not be considered a significant adverse comment, unless the comment states why this rule would be ineffective without the additional change.

III. Legal Authority

The broad rulemaking authority conferred on FDA by the U.S. Congress under the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 201 *et seq.*) permits the agency to amend its regulations as contemplated by this proposed rule. Section 701(a) of the act (21 U.S.C. 371 (a)) gives FDA general rulemaking authority to issue regulations for efficient enforcement of the act.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of this proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive order and in the other two statutes. This proposed rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. The agency has considered the effect that this proposed rule would have on small entities. Because the proposed rule will amend only internal agency procedures, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore under the Regulatory Flexibility Act, no further analysis is required.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531) requires that agencies prepare a written statement of anticipated costs and benefits before issuing any proposed or final rule ''that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year * * *.'' This proposed rule imposes no Federal mandate that will result in such an expenditure. Therefore, FDA is not required to prepare a cost/benefit statement.

VI. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VII. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VIII. Request for Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. In the event the direct final rule is withdrawn, all comments will be considered comments on this proposed rule.

List of Subjects

21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

21 CFR Part 16

Administrative practice and procedure.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 5 and 16 are amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2 605; 7 U.S.C. 138a, 2217; 15 U.S.C. 638, 1261–1282, 1451–1461, 3701–3711a; 21 U.S.C. 61–63, 141–149, 301–394, 467f, 679(b), 801–886, 1031–1309, 1401–1403; 35 U.S.C. 156; 42 U.S.C. 238, 241, 242, 242a, 242l, 242n, 242o, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1, 300ar–25–28, 300cc, 300ff, 1395y, 4332, 4831(a), 10007–10008; E.O. 11921, 41 FR 24294, 3 CFR, 1977 Comp., p. 124–131; E.O. 12591, 52 FR 13414, 3 CFR, 1988 Comp., p. 220–223.

2. In § 5.28 revise paragraph (c)(1), redesignate paragraph (c)(10) as paragraph (c)(11), and add new paragraph (c)(10) to read as follows:

§ 5.28 Hearings.

* * * * *

(c) * * *

(1) The Director, Office of the Ombudsman, Office of External Relations, Office of the Commissioner.

* * * * *

(10) An Administrative Law Judge.

* * * * *

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

3. The authority citation for 21 CFR part 16 continues to read as follows:

Authority: 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201–262, 263b, 364.

4. Amend § 16.42 by revising paragraph (a) to read as follows:

§ 16.42 Presiding officer.

(a) An FDA employee to whom the Commissioner delegates such authority, or any other agency employee designated by an employee to whom such authority is delegated, or, consistent with 5 CFR 930.209(b) or (c), an administrative law judge to whom such authority is delegated, may serve as the presiding officer and conduct a regulatory hearing under this part.

* * * * *

Dated: August 7, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–20700 Filed 8–14–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

23 CFR Part 450

[FHWA Docket No. FHWA–99–5933]

FHWA RIN 2125–AE95; FTA RIN 2132–AA75

Statewide Transportation Planning; Metropolitan Transportation Planning

AGENCY: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice; extension of comment period.

SUMMARY: The FHWA and FTA propose to extend the comment period for a supplemental notice of proposed rulemaking, which was published June 19, 2002, at 67 FR 41648. The original comment period is set to close on August 19, 2002. The proposed extension stems from concern expressed jointly by the American Association of Highway and Transportation Officials (AASHTO), the National Association of Counties (NACO), and the National Association of Development Organizations (NADO) that the August 19 closing date does not provide sufficient time for response to the supplemental notice of proposed rulemaking. The FHWA and FTA recognize that others interested in commenting may have similar time constraints and agree that the comment period should be extended. Therefore, the closing date for comments is changed to September 19, 2002, which will provide the AASHTO, NACO, NADO and others interested in commenting additional time to evaluate the supplemental notice of proposed rulemaking and to submit responses.

DATES: Submit comments on or before September 19, 2002.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Mr. Dee Spann, Statewide Planning Team (HEPS), (202) 366–4086 or Mr. Reid Alsop, Office of the Chief Counsel (HCC–31), (202) 366–1371. For the FTA: Mr. Paul Verchinski, Statewide Planning Divison (TPL–11) or Mr. Scott Biehl, Office of the Chief Counsel (TCC–30), (202) 366–0952. Both agencies are located at 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., e.t., and for the FTA are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Docket Facility, Room PL–401, by using the universal resource locator (URL) *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http:// www.nara.gov/fedreg* and the Government Printing Office's Web site at *http://www.access.gpo.gov.*

Background

Section 1025 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240, 105 Stat. 1914, (December 18, 1991), amended title 23, United States Code (U.S.C.), section 135 and established a requirement for Statewide Transportation Planning and stated, ''[t]he transportation needs of non-metropolitan areas should be considered through a process that includes consultation with local elected officials with jurisdiction over transportation.'' The ISTEA further stated ''[p]rojects undertaken in areas of less than 50,000 population (excluding projects undertaken on the National Highway System and pursuant to the bridge and Interstate maintenance programs) shall be selected by the State in cooperation with the affected local officials. Projects undertaken in such areas on the National Highway System or pursuant to the bridge and Interstate maintenance programs shall be selected by the State in consultation with the affected local officials.''

Section 1204 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107 (June 9, 1998), further amended 23 U.S.C. 135, while preserving the statewide planning requirement for a continuing, comprehensive, and cooperative planning process. Although the TEA–21 did not significantly alter the current decisionmaking relationship among governmental units, it does demonstrate the Congress' continued emphasis on States consultation with non-metropolitan local officials in transportation planning and programming. Consultation with non-metropolitan local officials in transportation planning and programming is the specific subject of the SNPRM, which the FHWA and the FTA published June 19, 2002, at 67 FR 41648.

The SNPRM provided an alternative proposal regarding consultation with non-metropolitan local officials which is different from that contained in the FHWA and the FTA notice of proposed rulemaking (NPRM) published on May 25, 2000 (65 FR 33922), which detailed proposed revisions to the existing planning regulations issued on October 28, 1993, at 58 FR 58040. Comments were solicited until August 23, 2000 (later extended to September 23, 2000, by a July 7, 2000, **Federal Register** notice at 65 FR 41891). The docket is still open.

The House report (H.R. Rep. No. 107–108, at 80 (2001)) that accompanied the U.S. DOT Appropriations Act for fiscal year (FY) 2002 (Pub. L. 107–87), and the conference report (H.R. Rep. No. 107–350 (2001)) for the Department of Defense FY 02 Appropriations Act (Pub. L. 107–117), contained several transportation provisions. They include language directing the U.S. DOT to promulgate a final rule, no later than February 1, 2002, to amend the FHWA and FTA planning regulations to ensure transportation officials from rural areas are consulted in long range transportation planning and programming.

The original comment period for the SNPRM is set to close on August 19, 2002. The AASHTO, NACO, and NADO are working together to develop joint comments on the SNPRM, and they jointly expressed concern that this closing date does not provide sufficient time to review the proposed changes, consolidate comments, and submit them. To allow time for these organizations and others to prepare and submit appropriate comments, the closing date for comments is changed from August 19, 2002, to September 19, 2002.

Authority: 23 U.S.C. 134, 135, and 315; and 49 U.S.C. 5303–5306.

Issued on: August 8, 2002.

Mary E. Peters,

Federal Highway Administrator.

Jennifer L. Dorn,

Federal Transit Administrator.

[FR Doc. 02–20626 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106359–02]

RIN 1545–BA57

Compensatory Stock Options Under Section 482; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to a notice of proposed rulemaking and notice of public hearing published in the **Federal Register** on Monday, July 29, 2002 (67 FR 48997) that provides guidance regarding the application of the rules of section 482 governing qualified cost sharing arrangements.

FOR FURTHER INFORMATION CONTACT: Douglas Giblen, (202) 874–1490 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of these corrections are under section 355(e) of the Internal Revenue Code.

Need for Correction

As published, REG–106359–02 contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the (REG–106359–02), which is the subject of FR Doc. 02–19126 is corrected as follows:

1. On page 49001, column 2, in the preamble under the paragraph heading ''Comments and Public Hearing'', first full paragraph, line 2, the language ''for October 21, 2002, at 10 a.m., in'' is corrected to read ''for November 20, 2002, at 10 a.m., in''.

2. On page 49001, column 2, in the preamble under the paragraph heading ''Comments and Public Hearing'', second paragraph, third line from the bottom, the language ''September 30, 2002. A period of 10'' is corrected to read ''October 30, 2002. A period of 10''.

Cynthia Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–20758 Filed 8–14–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–248110–96]

RIN 1545–AY48

Guidance Under Section 817A Regarding Modified Guaranteed Contracts; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels the public hearing on proposed regulations that affects insurance companies that define the interest rate to be used with respect to certain insurance contracts that guarantee higher returns for an initial, temporary period.

DATES: The public hearing originally scheduled for Tuesday, August 27, 2002, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: LaNita Van Dyke of the Regulations Unit, Associate Chief Counsel (Income Tax and Accounting), (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Monday, June 03, 2002 (67 FR 38214), announced that a public hearing was scheduled for Tuesday, August 27, 2002, at 10 a.m., in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 817 of the Internal Revenue Code. The public comment period for these proposed regulations expired on Tuesday, August 6, 2002.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Monday, August 12, 2002, no one has requested to speak. Therefore, the public hearing scheduled

for Tuesday, August 27, 2002, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–20759 Filed 8–14–02; 8:45 am]

BILLING CODE 4830–01–P

POSTAL SERVICE

39 CFR Part 111

Firm Pieces in Presorted Bound Printed Matter Mailings

AGENCY: Postal Service.

ACTION: Clarification.

SUMMARY: This document clarifies and responds to comments on the mail preparation standards for Presorted Bound Printed Matter (BPM) mailings that include individually addressed firm pieces. The term ''firm piece'' is generally used to describe a mailpiece that consists of more than one component (all destined for the same delivery address) composited into a single addressed mailpiece.

FOR FURTHER INFORMATION CONTACT: Tom DeVaughan, 703–292–3640; or Marc McCrery, 202–268–2704.

SUPPLEMENTARY INFORMATION: On April 24, 2002, the Postal Service published in the **Federal Register** (67 FR 20074) a request for comment on the Domestic Mail Manual (DMM) eligibility and mail preparation standards for firm pieces in Presorted BPM mailings. The notice sought comment on the application of the existing rules; it did not propose any change to the DMM.

The Postal Service received comments from four printers, two mail owners, and two presort software vendors. Several of the comments received were outside the scope of the notice. Four commenters included a statement that they were opposed to the change or ''proposal.'' However, the notice was clarifying and not proposing to change any DMM eligibility or mail preparation standards.

Two commenters stated that they are in agreement with the current standards and that no changes are necessary, as long as all BPM mailers are required to meet the standards for both mail preparation (based on the characteristics of the mailpiece) and destination entry rate eligibility (based on the entry of the mailpiece).

BPM irregular parcels weighing less than 10 pounds have essentially the same preparation standards as flats: they must first be prepared into presort destination packages (e.g., secure multiple addressed pieces destined for the same 3-digit ZIP Code together in a 3-digit package), as appropriate, prior to sacking and palletization. Several commenters insisted that the Postal Service granted exceptions to this preparation in the past.

BPM standards were completely rewritten with industry participation for R2001–1 implementation on January 7, 2001. The USPS pointed to how the new standards would reduce postal processing costs, help mitigate future postage rate increases, and make it easier to determine when BPM mailings are not prepared properly for the rates claimed. For BPM to be eligible for Presorted rates, pieces must be presorted into destination packages to the finest extent possible, with each presort destination package containing a minimum of two addressed pieces. BPM mailings not prepared in accordance with these standards are not eligible for Presorted rates and, thus, are also not eligible for destination entry rates (like Standard Mail preparation). The exception is that BPM irregular parcels placed directly in 5-digit scheme or 5-digit sacks or on 5-digit scheme or 5-digit pallets are not required to be first be secured together in 5-digit presort destination packages. Machinable parcels placed on 5-digit scheme or 5-digit pallets and BMC pallets also do not require presort (destination) package preparation.

One commenter stated that the Postal Service could use small parcel and bundle sorters (SPBSs) to sort single individually addressed firm pieces to 5-digit destinations. This scenario is not possible in all cases because not all SCFs have SPBSs. The most efficient way for the Postal Service to process parcels to the 5-digit level is to sort machinable parcels on bulk mail center (BMC) parcel sorting machines (PSMs). Irregular parcels, such as BPM firm pieces, that do not meet the machinable criteria for processing on PSMs are more costly to sort as individual pieces and are therefore required to be placed in presort destination packages to minimize piece distribution costs. Parcels placed on 5-digit scheme, 5-digit, and optional 5-digit metro pallets do not have to meet machinability criteria for PSMs because they would by-pass that operation and avoid the piece distribution costs.

One commenter stated that pieces of Standard Mail flats may, at the mailer's option, be grouped together to create a BPM irregular parcel, thus allowing them to be mailed at BPM rates, which are less than if each component were mailed individually at Standard Mail rates. The Postal Service agrees with this option, provided the mailer then secures these BPM pieces together in accordance with the required mail preparation standards for the BPM rates claimed (i.e., presort destination packages are required).

A majority of BPM firm piece preparation results in the creation of irregular parcels weighing less than 10 pounds each (as described in DMM M722.1.1). Although BPM irregular parcels are flat in shape, they generally exceed the flat sorting machine maximums for flat-size piece processing in thickness (3/4 inch) as defined in DMM C050. Processing of individual machinable BPM parcels is performed at BMCs and, in limited situations, at auxiliary service facilities (ASFs), but not in sectional center facilities (SCFs). Four commenters stated that because the Postal Service permits Periodicals mailers to prepare firm pieces and to use a ''firm'' optional endorsement line to identify them, it should also be permitted in BPM mailings. Unlike the rates for Periodicals mail, BPM presorted rates are not structured to accommodate firm piece preparation and the costs associated with processing single addressed pieces (except for machinable parcels) claimed at a Presorted rate. Periodicals rates place greater emphasis on the pound rate portions (advertising and nonadvertising), whereas BPM rates place greater emphasis on the addressed piece rate portion.

Use of a firm optional endorsement line (OEL) is practical only with Periodicals mailings, since those firm pieces are not permitted to be physically secured with other pieces within a presort destination package. Including firm pieces within presort destination packages of BPM when mailers rely solely on OELs for labeling of presort destination packages does not accommodate two possible destinations within a presort destination package (e.g., firm and 5-digit). If the firm piece were the top piece in a presort destination package, it is likely that the entire package would be delivered to the address on that firm piece. One commenter stated that requiring the use of facing slips in lieu of OELs is counterproductive. The Postal Service simply suggested facing slips as means of overcoming the above scenario.

One commenter asked if the increase in maximum weight for a BPM piece was considered. The increase in weight limits for BPM mailpieces occurred October 5, 1997, more than three years before R2000–1 implementation on January 7, 2001.

Three commenters stated that they run a ''pre-pass'' to determine the

number of addresses receiving multiple components. Upon completion, the mailing job is then split into two mailings: one consisting of the multiple component pieces prepared as a machinable parcel mailing, and a second (separate) mailing of single component pieces prepared and mailed as flats or irregular parcels. As confirmed by one presort software vendor, firm piece preparation (if prepared as flats or irregular parcels requiring further packaging) creates a problem since it would be necessary to put a package (firm piece) into another package (presort destination), followed by the sacking or palletization. Additionally, the commenter stated that this preparation contributes to presort documentation and Mail.dat/PostalOne issues. These concerns have been brought to the attention of Business Mail Acceptance and Business Customer Support Systems.

One commenter said that the Postal Service has allowed single firm pieces in BPM mailings since January 7, 2001 (either through exception or unknowingly), and, therefore, the Postal Service should continue to do so. For the reasons stated here and in the April 24, 2002, **Federal Register** notice, the Postal Service cannot support this request.

Based on the comments, many mailers seem to believe that any BPM on SCF or finer pallets is eligible for DSCF entry. To clarify, BPM flats and BPM irregular parcels weighing less than 10 pounds are eligible for DSCF entry only as follows:

Pieces in 5-digit and 3-digit presort destination packages placed in 5-digit, 3-digit, and optional SCF sacks (DMM M722.2). Presort destination packages placed in 5-digit, 3-digit, and optional SCF sacks, then placed onto 5-digit, optional 3-digit, SCF, and ASF pallets (DMM M045.3.3). Pieces in 5-digit and 3-digit presort destination packages only placed directly onto 5-digit scheme, 5-digit, optional 5-digit metro, optional 3-digit, SCF, and ASF pallets (DMM M045.3.3). Mail on ASF pallets (DMM L602) outside of the plant's SCF service area (DMM L005) is eligible for DBMC rates.

Any further consideration of allowing firm piece preparation in Presorted BPM mailings of flats and irregular parcels can be given due consideration only as part of a future rate case.

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–20665 Filed 8–14–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY 125–200233(b); FRL–7259–8]

Approval and Promulgation of Implementation Plans for Kentucky: Regulatory Limit on Potential To Emit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is conditionally approving a revision to the State Implementation Plan (SIP) of the Commonwealth of Kentucky incorporating Kentucky rule 401 KAR 50:080. This rule affects sources whose actual emissions are 50 percent or less of the major source threshold whereas the sources' potential to emit (PTE) exceeds the major source threshold. In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before September 16, 2002.

ADDRESSES: All comments should be addressed to: Michele Notarianni, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. (404/562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail))

Copies of the Commonwealth's submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. (Michele Notarianni, 404/562–9031, *notarianni.michele@epa.gov*)

Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403. (502/573–3382)

FOR FURTHER INFORMATION CONTACT: Michele Notarianni at address listed above or 404/562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail).

SUPPLEMENTARY INFORMATION: For additional information, *see* the direct final rule which is published in the Rules section of this **Federal Register**.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 02–20746 Filed 8–14–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–85–1–200107b; FRL–7259–5]

Approval and Promulgation of Implementation Plans; Florida: Approval of Revisions to the Florida State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is approving revisions to the Florida State Implementation Plan (SIP) submitted on August 29, 2000, by the State of Florida through the Florida Department of Environmental Protection (FDEP). This submittal consists of revisions to the ozone air quality maintenance plan for the Tampa area (Hillsborough and Pinellas Counties) to remove the emission reduction credits attributable to the Motor Vehicle Inspection Program (MVIP) from the future year emission projections contained in those plans. This revision updates the control strategy for the Tampa maintenance area by removing emissions credit for the MVIP, and as such, transportation conformity must be redetermined by the Metropolitan Planning Organizations (MPOs) within 18 months of the final approval of this document. In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the

approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before September 16, 2002.

ADDRESSES: All comments should be addressed to Joey LeVasseur at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur at 404/562–9035 (e-mail: *levasseur.joey@epa.gov*).

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 02–20744 Filed 8–14–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL–7260–3]

Central Characterization Project Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From the Argonne National Laboratory-East Site Proposed for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA, or ''we'') is announcing an inspection for the week of September 9, 2002, at the Argonne National Laboratory-East (ANL–E). With this document, we also announce availability of Department of Energy (DOE) documents in the EPA Docket, and solicit public comments on the documents available in the docket for a period of 30 days. The following DOE documents, entitled ''CCP–PO–001—Revision 4, 5/31/02—CCP Transuranic Waste Characterization Quality Assurance Project Plan'' and ''CCP–PO–002—Revision 4, 5/17/02—CCP Transuranic Waste Certification Plan,'' are available for review in the public dockets listed in **ADDRESSES.** We will consider public comments received on or before the due date mentioned in **DATES.** In accordance with EPA's WIPP Compliance Criteria, we will conduct an inspection at ANL–E to verify that, using the systems and processes developed as part of the DOE Carlsbad Office's central characterization project (CCP), DOE can characterize TRU waste at ANL–E properly, consistent with the Compliance Criteria.

DATES: EPA is requesting public comment on the documents. Comments must be received by EPA's official Air Docket on or before September 16, 2002.

ADDRESSES: Comments should be submitted to: EPA Docket Center (EPA/DC), Air and Radiation Docket, Docket No. A–98–49, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The DOE documents are available for review in the official EPA Air Docket in Washington, DC, Docket No. A–98–49, Category II–A2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday–Thursday, 10 am–9 pm, Friday–Saturday, 10 am–6 pm, and Sunday 1 pm–5 pm; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: vary by semester; and in Santa Fe at the New Mexico State Library, Hours: Monday–Friday, 9 am–5 pm.

As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying. Air Docket A–98–49 in Washington, DC, accepts comments sent electronically or by fax (fax: 202–260–4400; e-mail: *a-and-r-docket@epa.gov).*

FOR FURTHER INFORMATION CONTACT: Ms. Rajani D. Joglekar, Office of Radiation and Indoor Air, (202) 564–7734. You can also call EPA's toll-free WIPP Information Line, 1–800–331–WIPP or visit our Website at *http://www.epa/gov/radiation/wipp.*

SUPPLEMENTARY INFORMATION:

Background

DOE is operating the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Public Law 102–579), as amended (Public Law 104–201), transuranic (TRU) waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and sludges.

On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision stated that the WIPP will comply with EPA's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C.

The final WIPP certification decision includes conditions that (1) prohibit shipment of TRU waste for disposal at WIPP from any site other than the Los Alamos National Laboratory (LANL) until the EPA determines that the site has established and executed a quality assurance program, in accordance with §§ 194.22(a)(2)(i), 194.24(c)(3), and 194.24(c)(5) for waste characterization activities and assumptions (Condition 2 of appendix A to 40 CFR part 194); and (2) prohibit shipment of TRU waste for disposal at WIPP from any site other than LANL until the EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.22(c)(4) (Condition 3 of appendix A to 40 CFR part 194). The EPA's approval process for waste generator sites is described in § 194.8. As part of EPA's decision-making process, the DOE is required to submit to EPA appropriate documentation of quality assurance and waste characterization programs at each DOE waste generator site seeking approval for shipment of TRU radioactive waste to WIPP. In accordance with § 194.8, EPA will place such documentation in the official Air Docket in Washington, DC, and informational dockets in the State of New Mexico for public review and comment.

EPA will perform an inspection of the TRU waste characterization activities

performed by the DOE's Central Characterization Project (CCP) staff at the Argonne National Laboratory-East (ANL–E) in accordance with Condition 3 of the WIPP certification. We will evaluate the adequacy, implementation, and effectiveness of the CCP technical activities contracted by the ANL–E for characterization of the disposal of retrievably-stored debris waste at the WIPP. The overall program adequacy and effectiveness of CCP/ANL–E documents will be based on the following DOE-provided documents: (1) CCP–PO–001—Revision 4, 5/31/02—CCP Transuranic Waste Characterization Quality Assurance Project Plan and (2) CCP–PO–002—Revision 4, 5/17/02—CCP Transuranic Waste Certification Plan. EPA has placed these DOE-provided documents pertinent to the ANL–E inspection in the public docket described in **ADDRESSES.** The documents are included in item II–A2–40 in Docket A–98–49. In accordance with 40 CFR 194.8, EPA is providing the public 30 days to comment on these documents. The inspection is scheduled to take place the week of September 9, 2002.

EPA will inspect the following technical elements for characterizing retrievably-stored TRU debris and solid waste: data validation and verification, acceptable knowledge, nondestructive assay (NDA–WIT and APNEA), Digital Radiography/Computed Tomography, visual examination, and data tracking and reporting via the WIPP Waste Information System.

If EPA determines as a result of the inspection that the proposed CCP waste characterization processes and programs used at ANL–E adequately control the characterization of transuranic waste, we will notify DOE by letter and place the letter in the official Air Docket in Washington, DC, as well as in the informational docket locations in New Mexico. A letter of approval will allow DOE to ship transuranic waste from ANL–E to the WIPP. The EPA will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed.

Information on the certification decision is filed in the official EPA Air Docket, Docket No. A–93–02 and is available for review in Washington, DC, and at three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket since the October 1992 enactment of the WIPP LWA.

Dated: August 9, 2002.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 02–20864 Filed 8–14–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL–7260–4]

Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From the Los Alamos National Laboratory for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of, and soliciting public comments for 30 days on, Department of Energy (DOE) documents applicable to characterization of transuranic (TRU) radioactive waste at the Los Alamos National Laboratory (LANL) proposed for disposal at the Waste Isolation Pilot Plant (WIPP). The documents (Item II–A2–41, Docket A–98–49) are available for review in the public dockets listed in **ADDRESSES.** EPA will conduct an inspection of waste characterization systems and processes at LANL to verify that the site can characterize transuranic waste in accordance with EPA's WIPP compliance criteria. EPA will perform this inspection the week of August 26, 2002.

DATES: EPA is requesting public comment on the documents. Comments must be received by EPA's official Air Docket on or before September 16, 2002.

ADDRESSES: Comments should be submitted to: EPA Docket Center (EPA/DC), Air and Radiation Docket, Docket No. A–98–49, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The DOE documents are available for review in the official EPA Air Docket in Washington, DC, Docket No. A–98–49, Category II–A2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday-Thursday, 10 am-9 pm, Friday-Saturday, 10 am-6 pm, and Sunday 1 pm-5 pm; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: vary by semester; and in Santa Fe at the New Mexico State Library, Hours: Monday-Friday, 9 am-5 pm.

As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying. Air Docket A–98–49 in Washington, DC, accepts comments sent electronically or by fax (fax: 202–566–1741; e-mail: *a-and-r-docket@epa.gov).*

FOR FURTHER INFORMATION CONTACT: Mr. Ed Feltcorn, Office of Radiation and Indoor Air, (202) 564–9422. You can also call EPA's toll-free WIPP Information Line, 1–800–331–WIPP or visit our Website at *http://www.epa/gov/radiation/wipp.*

SUPPLEMENTARY INFORMATION:

Background

DOE is developing the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Public Law 102–579), as amended (Public Law 104–201), TRU waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and sludges.

On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision stated that the WIPP will comply with EPA's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C.

The final WIPP certification decision includes conditions that (1) prohibit shipment of TRU waste for disposal at WIPP from any site other than the Los Alamos National Laboratory (LANL), or of additional waste streams at LANL other than those approved by the certification, until the EPA determines that the site has established and executed a quality assurance program, in accordance with §§ 194.22(a)(2)(i), 194.24(c)(3), and 194.24(c)(5) for waste characterization activities and assumptions (Condition 2 of appendix A to 40 CFR part 194); and (2) prohibit shipment of TRU waste for disposal at WIPP from any site other than LANL, or of additional waste streams at LANL other than those approved by the certification, until the EPA has approved the procedures developed to

comply with the waste characterization requirements of § 194.22(c)(4) (Condition 3 of appendix A to 40 CFR part 194). The EPA's approval process for waste generator sites is described in § 194.8. As part of EPA's decision-making process, the DOE is required to submit to EPA appropriate documentation of quality assurance and waste characterization programs at each DOE waste generator site seeking approval for shipment of TRU radioactive waste to WIPP. In accordance with § 194.8, EPA will place such documentation in the official Air Docket in Washington, DC, and informational dockets in the State of New Mexico for public review and comment.

EPA will perform an inspection of LANL's technical program for waste characterization in accordance with Condition 3 of the WIPP certification. Specifically, we will be examining a new piece of Non-Destructive Assay (NDA) equipment, the Portable Tomographic Gamma Scanner (P–TGS), for characterizing debris and homogeneous solid waste. In addition, we will inspect two new Visual Examination (VE) techniques applied to newly generated debris waste and packaging of sealed sources. The inspection is scheduled to take place the week of August 26, 2002.

EPA has placed a number of DOE-submitted documents pertinent to the inspection in the public docket described in **ADDRESSES.** These documents describe the specific requirements for the new equipment, systems, and processes that are being proposed for the LANL inspection. The documents are listed as Item II–A2–41 in Docket A–98–49. In accordance with 40 CFR 194.8, as amended by the final certification decision, EPA is providing the public 30 days to comment on these documents.

If EPA determines as a result of the inspection that the proposed processes and programs at LANL adequately control the characterization of transuranic waste, we will notify DOE by letter and place the letter in the official Air Docket in Washington, DC, as well as in the informational docket locations in New Mexico. A letter of approval will allow DOE to ship transuranic waste from LANL to the WIPP. The EPA will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed.

Information on the certification decision is filed in the official EPA Air Docket, Docket No. A–93–02 and is available for review in Washington, DC, and at three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket since the October 1992 enactment of the WIPP LWA.

Dated: August 9, 2002.

Robert Brenner,

Assistant Administrator for Air and Radiation.

[FR Doc. 02–20865 Filed 8–14–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7258–5]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete Operable Unit (OU) No. 2 of the Tex Tin Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is issuing a notice of intent to delete OU No. 2 of the Tex Tin Superfund Site located in Texas City, Galveston County, Texas from the National Priorities List (NPL) and requests public comments on this notice of intent. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at appendix B of 40 CFR part 300 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Texas, through the Texas Natural Resource Conservation Commission (TNRCC), have determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund, nor does it preclude future actions under the Texas Voluntary Cleanup Program (VCP) for OU No. 2. In the ''Rules and Regulations'' Section of today's **Federal Register**, we are publishing a direct final notice of deletion of OU No. 2 of the Tex Tin Superfund Site without prior notice of intent to delete because we view this as a noncontroversial revision and anticipate no adverse comment.

We have explained our reasons for this deletion in the preamble to the direct final deletion. If we receive no adverse comment(s) on this notice of intent to delete or the direct final notice of deletion, we will not take further action on this notice of intent to delete. If we receive adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the Rules section of this **Federal Register**.

DATES: Comments concerning this Site must be received by September 16, 2002.

ADDRESSES: Written comments should be addressed to: Donn Walters, Community Involvement Coordinator, U.S. EPA (6SF–PO), 1445 Ross Avenue—Suite 1200, Dallas, Texas, 75202–2733, (214) 665–6483 or 1–800–533–3508 (toll free).

FOR FURTHER INFORMATION CONTACT: Carlos A. Sanchez, Remedial Project Manager, U.S. EPA (6SF–A), 1445 Ross Avenue—Suite 1200, Dallas, Texas, 75202–2733, (214) 665–8507.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Notice of Deletion which is located in the Rules section of this **Federal Register**.

Information Repositories: Repositories have been established to provide detailed information concerning this decision at the following address: Region 6, 12th Floor Library, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6427, Monday through Friday 7:30 am to 4:30 pm; Moore Memorial Public Library, 1701 Ninth Avenue North, Texas City, Texas 77590, (409) 643–5979, Monday through Wednesday 9 a.m. to 9 p.m., Thursday and Friday 9 a.m. to 6 p.m., Saturday 10 a.m. to 4 p.m.; Texas Natural Resource Conservation Commission, Building D, Record Management, Room 190, 12100 North Interstate Highway 35, Austin, Texas 78753, (512) 239–2920, Monday through Friday 8 a.m. to 5 p.m.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: July 29, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 02–20447 Filed 8–14–02; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 67, No. 158
Thursday, August 15, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Assessment of Fees for Dairy Import Licenses for the 2003 Tariff-Rate Import Quota Year

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces that the fee to be charged for the 2003 tariff-rate quota (TRQ) year for each license issued to a person or firm by the Department of Agriculture authorizing the importation of certain dairy articles which are subject to tariff-rate quotas set forth in the Harmonized Tariff Schedule of the United States (HTS) will be $170.00 per license.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Michael Hankin, Dairy Import Quota Manager, Import Policies and Programs Division, STOP 1021, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1021 or telephone at (202) 720–9439 or e-mail at *Michael.Hankin@fas.usda.gov.*

SUPPLEMENTARY INFORMATION: The Dairy Tariff-Rate Import Quota Licensing Regulation promulgated by the Department of Agriculture and codified at 7 CFR 6.20–6.37 provides for the issuance of licenses to import certain dairy articles which are subject to TRQs set forth in the HTS. Those dairy articles may only be entered into the United States at the in-quota TRQ tariff rates by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation.

Licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country of origin. The use of licenses by the license holder to import dairy articles is monitored by the Dairy Import Quota Manager, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, and the U.S. Customs Service.

The regulation at 7 CFR 6.33(a) provides that a fee will be charged for each license issued to a person or firm by the Licensing Authority in order to reimburse the Department of Agriculture for the costs of administering the licensing system under this regulation.

The regulation at 7 CFR 6.33(a) also provides that the Licensing Authority will announce the annual fee for each license and that such fee will be set out in a notice to be published in the **Federal Register**. Accordingly, this notice sets out the fee for the licenses to be issued for the 2003 calendar year.

Notice

The total cost to the Department of Agriculture of administering the licensing system during 2002 has been determined to be $441,700 and the estimated number of licenses expected to be issued is 2,600. Of the total cost, $214,000 represents staff and supervisory costs directly related to administering the licensing system for 2002; $50,500 represents the total computer costs to monitor and issue import licenses for 2002; and $177,200 represents other miscellaneous costs, including travel, postage, publications, forms, and ADP system contractors.

Accordingly, notice is hereby given that the fee for each license issued to a person or firm for the 2003 calendar year, in accordance with 7 CFR 6.33, will be $170.00 per license.

Issued at Washington, DC the 8th day of August, 2002.

Michael Hankin,

Licensing Authority.

[FR Doc. 02–20726 Filed 8–14–02; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF INTERIOR

Bureau of Land Management

Notice of Intent; Northern Rockies Lynx Amendments

AGENCY: Forest Service, USDA, lead agency; Bureau of Land Management, USDI, cooperating agency.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service and Bureau of Land Management (BLM) have decided to prepare an Environmental Impact Statement (EIS) on a proposal to amend land use/land management plans to incorporate management direction for the Canada lynx for national forests and BLM units within the northern Rocky Mountain area.

A scoping notice for the preparation of an Environmental Assessment was published in the **Federal Register**, September 11, 2001, Vol. 66, No. 176, page 47161. Based on the level of interest expressed during scoping, the Responsible Officials have decided to prepare an EIS. The comments received during the scoping process for the Environmental Assessment will be used in preparation of the EIS; therefore scoping will not be reinitiated.

DATES: The Forest Service and BLM expect the Draft EIS to be released for public, agency, and tribal government comment in the late summer/early fall of 2002, with a Final EIS and associated decision documents expected early in 2003. Information regarding public meetings on the Draft EIS will be posted on the Internet at *http://www.fs.fed.us/r1/planning/lynx.html* and sent to people who commented during scoping or asked to be on the mailing list.

ADDRESSES: Send written comments to Northern Rockies Lynx Amendment, Attn: Jon Haber, Project Manager, Northern Region Headquarters, PO BOX 7669, Missoula, MT 59807.

FOR FURTHER INFORMATION CONTACT: Marcia Hogan, Public Affairs Officer, (406) 329–3300. Information regarding lynx and the planning process can also be found at *http://www.fs.fed.us/r1/planning/lynx.html.*

SUPPLEMENTARY INFORMATION: A scoping notice for the preparation of an Environmental Assessment was published in the **Federal Register**, on September 11, 2001, Vol. 66, No. 176, page 47161. The notice described the land areas involved, background information, purpose and need, proposed action, decision framework, responsible officials, public involvement, preliminary issues, and estimated dates for filing the environmental document, as well as the reviewer's obligation to comment.

The notice stated that the scoping process would be used to evaluate whether or not an EIS is warranted. It further stated, ''If an EIS is warranted then written comments resulting from this notice will be used to determine the scope of alternatives and effects in the EIS.''

Based on the level of interest expressed during scoping, the Responsible Officials have decided to prepare an EIS. The comments received during the scoping process for the Environmental Assessment will be used in preparation of the EIS; therefore scoping will not be reinitiated. Several alternatives will be considered in the EIS, including the no action alternative. The action alternatives are designed to accomplish the purpose and need as stated in the September 11, 2002, **Federal Register** scoping notice: ''To establish management direction that conserves and promotes recovery of the Canada lynx by reducing or eliminating adverse effects from land management activities on these national forests and BLM lands, while preserving the overall multiple-use direction in existing plans,'' and ''to achieve the stated purpose, the selected amendment must provide a level of lynx conservation and recovery comparable to the Lynx Conservation Assessment Strategy.'' The primary issues include: the agencies' ability to adapt management to new information; scale to which some standards apply; limits on precommercial thinning; limit of salvage less than five acres; effect on winter recreation special use permits and agreements from requiring no-net-increase of groomed or designated routes; and the effect of road guidelines on upgrading of the transportation system. Written comments on the range of alternatives and their effects will be requested and considered when the Draft EIS is released.

The national forests and BLM units and their associated plans included in this amendment are shown below. The **Federal Register** notice prepared for scoping said that 18 land and resource management plans for national forests in Idaho, Montana, Utah and Wyoming, and 18 BLM land use plans in Idaho and Utah would be amended. This notice corrects that information. There are 20 land and resource management plans that would be amended on 18 National Forests and 9 BLM land use plans that would be amended on 9 BLM Field Offices. Some of the forests have been consolidated, but retain the plans for the original forest. The number of BLM plans has been modified based on additional review of lynx habitat on BLM lands.

NATIONAL FORESTS AND ASSOCIATED LAND MANAGEMENT PLANS

Region 1:	
Bitterroot	Bitterroot Forest Plan
Beaverhead-Deerlodge.	Beaverhead Forest Plan, Deerlodge Forest Plan
Clearwater	Clearwater Forest Plan
Custer	Custer Forest Plan
Flathead	Flathead Forest Plan
Gallatin	Gallatin Forest Plan
Helena	Helena Forest Plan
Idaho Panhandle.	Idaho Panhandle Forest Plan
Kootenai	Kootenai Forest Plan
Lewis and Clark.	Lewis and Clark Forest Plan
Lolo	Lolo Forest Plan
Nez Perce	Nez Perce Forest Plan
Region 2:	
Bighorn	Bighorn Forest Plan
Shoshone	Shoshone Forest Plan
Region 4:	
Ashley	Ashley Forest Plan
Bridger-Teton	Bridger-Teton Forest Plan
Salmon-Challis	Salmon Forest Plan, Challis Forest Plan
Caribou-Targhee.	Targhee Forest Plan

BUREAU OF LAND MANAGEMENT OFFICES AND ASSOCIATED LAND USE PLANS

Idaho	
Upper Columbia-Salmon/Clearwater District:	
Salmon Field Office.	Lemhi Resource Management Plan (RMP)
Challis Field Office.	Challis RMP
Coeur d'Alene Field Office.	Emerald Empire Management Framework Plan (MFP)
Cottonwood Field Office.	Chief Joseph MFP
Upper Snake River District:	
Idaho Falls Field Office.	Medicine Lodge RMP
Pocatello Field Office.	Pocatello RMP*
Shoshone Field Office.	Sun Valley MFP
Lower Snake River District:	
Four Rivers Field Office.	Cascade RMP
Utah	
Salt Lake City Field Office.	Randolph MFP

*Only the linkage area direction would apply.

Dated: June 17, 2002.

Kathleen A. McAllister,

Deputy Regional Forester.

Dated: June 19, 2002.

Fritz Rennebaum,

Acting Associate Idaho State Director.

[FR Doc. 02–20719 Filed 8–14–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–605]

Frozen Concentrated Orange Juice from Brazil; Rescission of Antidumping DutyAdministrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of the Antidumping Duty Administrative Review for the Period May 1, 2001, through April 30, 2002.

EFFECTIVE DATE: August 15, 2002.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Elizabeth Eastwood, Office of AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–0656 or (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department)'s regulations are to 19 CFR part 351 (2002).

Background

On May 6, 2002, the Department published in the **Federal Register** (67 FR 30356) a notice of opportunity to request an administrative review of the antidumping duty order regarding frozen concentrated orange juice from Brazil for the period May 1, 2001, through April 30, 2002.

In accordance with 19 CFR 351.213(b)(1), on May 31, 2002, the domestic interested parties of Florida Citrus Mutual, Citrus Belle, Citrus World, Inc., Orange-Co of Florida, Inc., Peace River Citrus Products, Inc., and Southern Gardens Citrus Processors Corp. requested a review of the antidumping duty order on frozen concentrated orange juice from Brazil with respect to the following producers/exporters: Citrovita Agro Industrial Ltda. and its affiliated parties Cambuhy MC Industrial Ltda. and Cambuhy Citrus Comercial e Exportadora (collectively ''Citrovita''), Branco Peres Citrus S.A. (Branco Peres), CTM Citrus S.A. (CTM), and Sucorrico S.A. (Sucorrico).

In June 2002, the Department initiated an administrative review for Citrovita, Branco Peres, CTM, and Sucorrico (67 FR 42753 (June 25, 2002)) and issued questionnaires to them.

In July and August 2002, Branco Peres, CTM, Citrovita, and Sucorrico notified the Department that neither they nor any of their affiliates had any sales or exports of subject merchandise during the period of review (POR). The Department has been able to confirm with the Customs Service that Branco Peres, CTM, Citrovita, and Sucorrico had no shipments of subject merchandise during the POR. *See* the August 5, 2002, memorandum from Elizabeth Eastwood to the file entitled ''Intent to Rescind the Antidumping Duty Administrative Review on Frozen Concentrated Orange Juice from Brazil.''

Rescission of Review

As Branco Peres, CTM, Citrovita, and Sucorrico had no sales or exports of subject merchandise for this POR, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are rescinding this review of the antidumping duty order on frozen concentrated orange juice from Brazil for the period of May 1, 2001, through April 30, 2002. This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: August 8, 2002.

Richard W. Moreland,

Deputy Assistant Secretary Import Administration.

[FR Doc. 02–20772 Filed 8–14–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Notice of Amended Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

EFFECTIVE DATE: August 15, 2002.

FOR FURTHER INFORMATION CONTACT: Ryan Langan or Cole Kyle, Office 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–2613 or (202) 482–1503, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce (''the Department'') regulations are to 19 CFR part 351 (April 2000).

Scope of Review

Imports covered by this review are shipments of stainless steel bar (''SSB''). SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Amended Final Results

On July 5, 2002, the Department determined that stainless steel bar from India is not being sold in the United States at less than fair value, as provided in section 735(a) of the Act. *See Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review* (''*Final Results*''), 67 FR 45956 (July 11, 2002). On July 15, 2002, we received ministerial error allegations, timely filed pursuant to 19 CFR 351.224(c)(2), from the petitioners regarding the Department's final margin calculations. Viraj did not submit any ministerial error allegations. However, on July 18, 2002, Viraj submitted comments, timely filed pursuant to 19 CFR 351.224(c)(3), responding to petitioners' ministerial error allegations.

The petitioners contend that the Department inadvertently omitted certain expenses and overstated indirect selling expense deductions when calculating the general and administrative expense ratio in our final results. The petitioners also allege that we incorrectly calculated entered value. The petitioners requested that we correct the errors and publish a notice of amended final results in the **Federal Register**, pursuant to 19 CFR 351.224(e). Viraj counters that the Department calculated the general and administrative expense ratio correctly and that petitioners' allegation concerning the indirect selling expense deduction is, in fact, a methodological argument and not a ministerial error. Viraj did not comment on the entered value allegation.

In accordance with section 735(e) of the Act, we have determined that certain ministerial errors were made in our final margin calculations. We corrected the general and administrative expense ratio to include certain additional expenses that we inadvertently omitted in the final results. We also corrected the entered value calculation. For a detailed discussion of these ministerial error allegations and the Department's analysis, see Memorandum to Richard W. Moreland, ''Antidumping Duty Administrative Review of Stainless Steel Bar from India; Allegations of Ministerial Errors'' dated August 8, 2002, which is on file in the Central Records Unit (''CRU''), room B–099 of the main Department building.

In accordance with 19 CFR 351.224(e), we are amending the final results of the antidumping duty administrative review of stainless steel bar from India to correct these ministerial errors. However, the

amended weighted-average margin is identical to the weighted-average margin in the final results (*see Final Results*). The weighted-average dumping margin for Viraj is listed below:

Producer/manufacturer/exporter	Original weighted-average margin percentage	Amended results weighted-average margin percentage
Viraj Group, Ltd.	0.47	0.47

Cash Deposit Rates

The following antidumping duty deposits will be required on all shipments of stainless steel bar from India entered, or withdrawn from warehouse, for consumption, effective on or after the publication date of the amended final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) For Viraj, no antidumping duty deposit will be required; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 12.45 percent, the ''all others'' rate established in the less-than-fair-value investigation (*see Stainless Steel Bar from India; Final Determination of Sales at Less Than Fair Value,* 59 FR 66915 (December 28, 1994)).

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

We are issuing and publishing these results and this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 8, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–20773 Filed 8–14–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Withdrawal of Request for Panel Review of the amended final antidumping duty administrative review made by the International Trade Administration, respecting Greenhouse Tomatoes from Canada (Secretariat File No. USA–CDA–2002–1904–06).

SUMMARY: Pursuant to the Notice of Withdrawal of the Request for Panel Review by the complainants, the panel review is terminated as of May 20, 2002. A panel has not been appointed to this panel review. Pursuant to Rule 71(2) of the *Rules of Procedure for Article 1904 Binational Panel Review,* this panel review is terminated.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested and terminated pursuant to these Rules.

Dated: July 19, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–20722 Filed 8–14–02; 8:45 am]

BILLING CODE 3510–GT–M

DEPARTMENT OF COMMERCE

International Trade Administration

Secretarial Business Development Mission to Ghana and South Africa

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice to Announce Secretary Evans-Business Development Mission to Ghana and South Africa, November 12–15, 2002.

SUMMARY: Secretary of Commerce Donald L. Evans will lead a senior-level business development mission to Accra, Ghana and Johannesburg, South Africa November 12–15, 2002. The delegation will include approximately 15 U.S.-based senior executives of small, medium, and large U.S. firms representing a variety of business sectors but not limited to leading sectors for each country as listed below in Section II. These key sectors reflect Africa's infrastructure needs, the growth of consumer society, and the increase in manufacturing created by the Africa Growth and Opportunity Act (AGOA).

DATES: Applications should be submitted to the Office of Business Liaison by September 20, 2002. Applications received after that date will be considered only if space and scheduling constraints permit.

FOR FURTHER INFORMATION CONTACT: Office of Business Liaison; Room 5062; Department of Commerce; Washington, DC 20230; Tel: (202) 482–1360; Fax: (202) 482–4054.

SUPPLEMENTARY INFORMATION:

Secretarial Business Development Mission to Ghana and South Africa

November 12–15, 2002

Mission Statement

I. Description of the Mission

Secretary of Commerce Donald L. Evans will lead a senior-level business development trade mission to Accra, Ghana and Johannesburg, South Africa November 12–15, 2002. The delegation will include approximately 15 U.S.-based senior executives of small, medium, and large U.S. firms representing a variety of business sectors but not limited to leading sectors for each country as listed below in Section II. These key sectors reflect Africa's infrastructure needs, the growth of a consumer society, and the increase in manufacturing created by the Africa Growth and Opportunity Act (AGOA).

The overall focus of the trip will be commercial opportunities for U.S. companies, including joint ventures, presented by the continuing market liberalization and privatization underway in these countries. In both Ghana and South Africa, briefings and one-on-one business appointments will be arranged for members of the business delegation. The participation fee for the trade mission will be between $6,000—$8,000 per company.

II. Commercial Setting for the Mission

Ghana: With the inauguration of the administration of President John Kufuor in December 2000, Ghana has become a West African leader in promoting economic reforms and establishing democratic institutions. President Kufuor has improved Ghana's economic situation through pragmatic policies aimed at political and economic stability, low inflation, and smaller fiscal deficits.

Often referred to as the ''Gateway to Africa'', Ghana is moving towards becoming a hub for commercial activity in West Africa. The country should become a middle income country by 2020 with President Kufuor aiming to institute a ''Golden Age of Business'' in Ghana. With $200 million of U.S. merchandise exports in 2001, Ghana is one of America's largest markets in Sub-Saharan Africa, and the bilateral commercial relationship between the United States and Ghana is one of the most diverse in the region. Ghana is a beneficiary country under the African Growth and Opportunity Act (AGOA) and its AGOA apparel eligibility provides a firm foundation for increased investment and stronger trade with the United States.

The leading sectors for exports to Ghana include telecommunications equipment, computers and peripherals, pharmaceuticals, electrical power systems, construction and earth moving equipment, mining industry equipment, food processing and packaging equipment, and hotel/restaurant equipment.

Standard and Poor's, a reflection of the country's sound economic fundamentals and stable macroeconomic policy.

South Africa: South Africa's pivotal, post-apartheid economic transformation remains sharply focused and widely respected internationally. Globalization is bringing with it new opportunities for expanded trade and investment. South Africa has been among Africa's leading beneficiaries under AGOA. The primary attraction for doing business in South Africa is the size and sophistication of the economy. South Africa accounts for more than 45% of Sub-Saharan Africa's Gross Domestic Product, and it is by far the United States' largest export market in Sub-Saharan Africa. U.S. exports to South Africa totaled $2.9 billion last year, accounting for approximately 40% of total U.S. exports to the region. In 2001, real GDP growth was 2.2%. South Africa's single greatest challenge is to accelerate growth and transform the economy so prosperity may be shared widely. Across the country, there are about 900 U.S. firms doing business in South Africa, up from approximately 250 in the mid-1990s. The United States is the largest foreign investor in South Africa since 1994.

The best sectors for exports to South Africa include telecommunications, information technology, transportation, energy and power generation, environmental technologies, security and safety equipment, health care products, earth moving equipment, mining industry equipment, food processing, packaging equipment, and cosmetics/hair care products.

III. Goals for the Mission

The mission will further both U.S. commercial policy objectives and advance specific business interests. It is aimed at:

- Introducing American companies to Ghana and South Africa and promoting expanded commercial opportunities in these countries;
- Enhancing the dialogue between government and industry on issues affecting the development of U.S.-African commercial relations;
- Removing impediments to market access encountered by U.S. firms in Ghana and South Africa;

Advocating for U.S. firms;

- Emphasizing the benefits of international trade for improving the standard of living and quality of life; and
- Highlighting examples of the corporate citizenship and active involvement by U.S. businesses in the communities where they operate in the United States and abroad.

IV. Scenario for the Mission

The mission will provide participants with exposure to high-level business and government contacts and an understanding of market trends and the commercial environment. American Embassy officials will provide a detailed briefing on the economic, commercial and political climate, and participants will receive individual counseling on their specific interests from U.S. Commercial Service industry specialists. Meetings will be arranged as appropriate with senior government officials and potential business partners. Representational events also will be organized to provide mission participants with opportunities to meet Ghana and South Africa's business and government representatives, as well as U.S. business people living and working in Africa.

The tentative trip itinerary will be as follows:

November 12—Accra, Ghana
November 13—Accra, Ghana
November 14—Johannesburg, South Africa
November 15—Johannesburg, South Africa

The Commerce Department's U.S. and Foreign Commercial Service will provide logistical support for these activities at each stop.

V. Criteria for Participant Selection

The recruitment and selection of private sector participants for this mission will be conducted according to the ''Statement of Policy Governing Department of Commerce-Overseas Trade Missions'' established in March 1997 (*http://www.ita.doc.gov/doctm/tmpol.html*). Promotion and recruitment will include, but not be limited to, posting on appropriate Department of Commerce web pages, notification in the **Federal Register**, and distribution of the trade mission statement and further information to national and other trade associations and trade publications. Approximately 15 companies will be selected for the mission. Companies will be selected according to the criteria set out below.

Eligibility

Participating companies must be incorporated in the United States. A

company is eligible to participate only if the products and/or services that it will promote (a) are manufactured or produced in the United States; or (b) if manufactured or produced outside the United States, are marketed under the name of a U.S. firm and have U.S. content representing at least 51 percent of the value of the finished good or service.

Selection Criteria

Companies will be selected for participation in the mission on the basis of:

- Consistency of company's goals with the scope and desired outcome of the mission as described herein;
- Relevance of a company's business and product line to market opportunities in Ghana and South Africa;
- Seniority of the representative of the designated company;
- Past, present, or prospective international business activity;
- Diversity of company size, type, location, demographics, and traditional under-representation in business;
- Degree of company's commitment to corporate citizenship.

An applicant's partisan political activities (including political contributions) are irrelevant to the selection process.

VI. Time Frame for Applications

Applications for the trade mission to Ghana and South Africa will be made available beginning on Wednesday, August 7, 2002. The fee to participate in the mission will be between $6,000–$8,000 per company and will not cover travel or lodging expenses. Please note that this fee is subject to change due to the in-country travel requirements. Expenses for travel, lodging, and some meals will be the responsibility of each participant. As noted above, each participant must fund his/her own travel to Accra, Ghana, the starting point for the mission. For additional information on the trade mission or to obtain an application, contact the Department of Commerce Office of Business Liaison at 202–482–1360. Applications should be submitted to the Office of Business Liaison by September 20, 2002, in order to ensure sufficient time to obtain in-country appointments for applicants selected to participate in the mission. Applications received after that date will be considered only if space and scheduling constraints permit.

Contact: Office of Business Liaison, Room 5062, Department of Commerce, Washington, DC 20230, Tel: (202) 482–1360, Fax: (202) 482–4054, Mission Web Site: *http://www.doc.gov/africatrademission*.

Dated: August 9, 2002.

Maria Cino,

Assistant Secretary and Director General.

[FR Doc. 02–20697 Filed 8–14–02; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Request for public comment pursuant to section 123(g)(1)(C) of the Uruguay Round Agreements Act, Requirements for Agency Action.

SUMMARY: The Department of Commerce is requesting comments on the proposed modification of its practice concerning the determination of whether sales to affiliated parties are made in the ordinary course of trade and thus may be considered for use in calculating normal value in antidumping proceedings.

DATES: To be assured of consideration, written comments must be received no later than August 30, 2002. Rebuttal comments must be received no later than September 6, 2002.

ADDRESSES: Submit comments to Faryar Shirzad, Assistant Secretary for Import Administration, U.S. Department of Commerce, Central Records Unit, Room 1870, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230; Attention: Affiliated Party Sales.

FOR FURTHER INFORMATION CONTACT: Kris Campbell (202) 482–1032, Linda Chang (202) 482–0835, or Mimi Steward (202) 482–1439.

SUPPLEMENTARY INFORMATION:

Background

In July 2001, the World Trade Organization (''WTO'') Appellate Body issued a report in a dispute involving U.S. antidumping measures on certain hot-rolled steel products from Japan (''Japan Hot-Rolled''),[1] concerning the Department's determination of whether sales made to affiliated parties in the comparison market were made in the ordinary course of trade and thus may be considered for use in calculating normal value.

Section 773(a)(1) of the Tariff Act of 1930, as amended (''the Act''), requires that the Department first attempt to calculate normal value using sales of the foreign like product which are, among other criteria, made ''in the ordinary course of trade.'' This provision implements Article 2.1 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the ''AD Agreement''), which requires that investigating authorities exclude sales not made in the ''ordinary course of trade'' from calculations of normal value.[2]

Under current Department practice, comparison market sales by an exporter or producer to an affiliated customer are treated as having been made at arm's length, and may be considered to be within the ordinary course of trade[3], if prices to that affiliated customer are, on average, at least 99.5 percent of the prices charged by that exporter or producer to unaffiliated comparison market customers. Under this 99.5 percent test, the Department determines the weighted-average selling price for each product for sales by the exporter or producer to each affiliated party. The Department also determines the weighted-average selling price for each product to the group of nonaffiliated comparison market customers. For each affiliated customer, the Department compares the weighted-average price to that affiliate for each product to the weighted-average price of the same product to all unaffiliated customers. The Department then weight averages the ratios found for all products sold to the affiliated customer. If the result shows sales prices to an individual affiliated party are, on average, at least 99.5 percent of the sales prices to all unaffiliated comparison market customers (*i.e.,* the overall ratio is at least 99.5 percent), all of the sales to that affiliated party may be treated as being made in the ordinary course of trade and may be used in calculating normal value. Otherwise, if the prices to the affiliate are, on average, less than 99.5 percent of prices to nonaffiliates, it is the Department's practice to disregard

[1] Dispute Panel Report on Japan Complaint Concerning U.S. Anti-dumping Measures on Certain Hot-Rolled Steel Products from Japan, WT/DS184/R (Feb. 28, 2001) (the ''Panel Report''). Appellate Body Report on Japan Complaint Concerning U.S. Anti-dumping Measures on Certain Hot-Rolled Steel products from Japan, WT/DS184/AB/R (July 24, 2001) (the ''AB Report'').

[2] Article 2.1 states: ''For the purpose of this Agreement, a product is to be considered as being dumped, i.e., introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.''

[3] Such sales may be outside the ordinary course of trade for other reasons, e.g., they are below cost.

them. Additionally, for affiliates that pass this test (*i.e.,* those whose weighted-average prices are above 99.5 percent), the exporter or producer may request the exclusion of individual sales to such an affiliate upon a showing that such sales are for other reasons outside the ordinary course of trade, *e.g.,* the prices are ''aberrationally'' or ''artificially'' high.

In its report in Japan Hot-Rolled, the WTO Appellate Body found that the Department's ''99.5%'' arm's-length test is inconsistent with the obligations of the United States under Article 2.1 of the AD Agreement. In the view of the Appellate Body, ''[i]f a Member elects to adopt general rules to prevent distortion of normal value through sales between affiliates, those rules must reflect, even-handedly, the fact that both high and low-priced sales between affiliates might not be 'in the ordinary course of trade.' '' *United States—Antidumping Measures on Certain Hot-Rolled Steel Products from Japan,* WT/DS184/AB/R, adopted August 23, 2001 (''AB Report''), para. 148. Furthermore, ''the duties of investigating authorities, under Article 2.1 of the Anti-Dumping Agreement, are precisely the same, whether the sales price is higher or lower than the 'ordinary course' price, and irrespective of the reason why the transaction is not in the ordinary course of trade. Investigating authorities must exclude, from the calculation of normal value, all sales which are not made in the ordinary course of trade.'' *AB Report, para.* 145. However, investigating authorities do not need to utilize identical rules to scrutinize each category of sales that is potentially not in the ordinary course of trade. *AB Report, para.* 146. WTO Members are afforded discretion in this determination, but such discretion must be exercised in an ''even-handed'' manner. *AB Report, para.* 148.

The United States and Japan entered into arbitration over the period of time in which to implement the Appellate Body's findings in the Japan Hot-Rolled dispute. The arbitrator found that the United States has until November 23, 2002, for implementation.

Pursuant to section 123(g)(1) of the Uruguay Round Agreements Act (''the URAA''), the Department must meet certain requirements before modifying or rescinding a practice that is found to be inconsistent with any of the Uruguay Round Agreements. Section 123(g)(1)(C) requires that the Department provide opportunity for public comment by publishing the proposed modifications in the **Federal Register**. The Department is soliciting comments pertaining to the following proposed modifications to the current policy for determining whether comparison market sales to affiliated parties are made at ''arm's length,'' and thus in the ordinary course of trade absent other factors such as below-cost sales, in light of the Appellate Body's report in the Japan Hot-Rolled dispute.

Proposed Arm's-Length Methodology

The Department proposes to alter its current test by requiring that, in order for sales by the exporter or producer to an affiliate to be included in the normal value calculation, those sales prices must fall, on average, within a defined range, or band, around sales prices of the same merchandise sold by that exporter or producer to all unaffiliated customers. The new test would require that the overall ratio calculated for an affiliate (as currently calculated) be between 98 percent and 102 percent, inclusive, in order for sales to that affiliate to be considered ''in the ordinary course of trade'' and used in the normal value calculation. Therefore, this new test is consistent with the view, expressed by the WTO Appellate Body, that rules aimed at preventing the distortion of normal value through sales between affiliates should reflect, ''even-handedly'', that ''both high and low-priced sales between affiliates might not be ''in the ordinary course of trade.'''

We will continue our present practices with regard to the use of so-called ''downstream'' sales (sales made by an affiliated buyer to that buyer's subsequent customer). Specifically:

1. If sales to all affiliates account for less than five percent of all comparison market sales, we normally will disregard downstream sales.

2. If sales to an affiliate fail the arm's-length test, and (1) does not apply, we normally will request the affiliate's downstream sales and use these instead of the sales which failed that test.

3. If a respondent has cooperated to the best of its ability and is unable to obtain downstream sales, we will not use adverse facts available.

Discussion

This test would require no change in the mathematical calculations the Department performs to determine which sales are made at arm's length. It only alters the standard applied to the numerical outcome of those calculations. Instead of using sales to an affiliate for normal value purposes when the prices to the affiliate are, on average, at or above a *threshold* of 99.5 percent of prices to unaffiliated parties, the Department would normally use sales to an affiliate when that overall ratio is within a *band* ranging from 98 percent to 102 percent, inclusive, of the prices for sales to unaffiliated parties. Because this band is symmetrical in its treatment of higher and lower priced sales, it meets the concern of the Appellate Body that any arm's-length test be ''even-handed.''

Because it adds a price ceiling to our current definition of ''normal'' sales, this test would likely result in using sales to affiliates less frequently than under the current methodology. Moreover, the narrower the band, the fewer sales to affiliates would be used, potentially resulting in fewer price-to-price comparisons and more use of constructed value in determining normal value. These considerations have influenced the choice of the size of the band used for this test.

Narrowing the band significantly (such as using a 99.5 percent—100.5 percent test) would reduce the utility of such a test, as few affiliates would pass. Thus the test would serve little purpose. For this reason, the Department is concerned that the band not be overly narrow. Yet the Department must balance these concerns against the fact that widening the band significantly could increase the potential for manipulating normal value through clustering of sales prices to affiliates at the lower end of the band.

Finally, we note that, in reaching this proposal, the Department examined a wide range of approaches. The more prominent among these are listed below, together with a brief indication of the primary reasons why we have not selected these options.

• Automatic exclusion of all affiliated party sales in determining normal value.

This would constitute a much more drastic change in policy than is necessary to implement the AB Report. Such a practice would not accord with the assumptions of 19 CFR 351.403(c) that sales to an affiliated party could be used under certain circumstances. Second, the automatic elimination of sales to affiliated parties from use in determining normal value would likely lead to significantly fewer instances where dumping is determined on the preferred basis: comparison of pricing in the home market with pricing in the U.S. market.

• Statistical testing (*e.g.,* standard deviation, difference in means, nonparametric tests).

The primary problems with such tests are that they do not adequately screen sales for antidumping purposes and would be difficult to apply in many situations we encounter. Such tests, properly applied, would allow certain affiliated party sales to be deemed to be in the ordinary course of trade, including affiliated party sales with

prices below unaffiliated sales prices, that we believe would distort dumping calculations. This is because such tests typically are much more conservative about what constitutes an outlier than is appropriate in an antidumping context. While we might use more restrictive versions of such tests than are normally applied in other contexts, this would likely reduce the statistical credibility of the tests. In addition, applying such tests in situations involving multiple products would significantly complicate the Department's analysis.

• Broader-band test with an additional requirement for overall affiliated party sales.

This test would allow for a broader band of sales to individual affiliates to pass the arm's-length test *provided* the Department finds that, in the aggregate, the respondent sells to affiliated and unaffiliated parties at comparable price levels. Under this two-part test, sales to an individual affiliate priced on average at, for instance, 95 percent of prices to unaffiliated parties might be found to be within the ordinary course of trade if we determine that the company's overall sales to affiliates are not systematically lower than prices to nonaffiliates. This would address manipulation concerns regarding companies that price to affiliates generally at the low end of the band. In essence, a company that sells to some affiliates at 95 percent of unaffiliated prices would have to sell to other affiliates at prices higher than unaffiliated prices in order to demonstrate that its overall sales prices to affiliated and unaffiliated parties are comparable. In order to adhere to the WTO's ''even-handedness'' requirement, the test would include higher-priced sales to an individual affiliate (*e.g.,* prices at 105 percent of unaffiliated prices) only if it is found that the company does not systematically price to affiliates at levels higher than nonaffiliates.

Problems with such an approach would include determining how the second part of the test should be structured to demonstrate whether overall sales to affiliates were ''comparable'' to those to unaffiliated parties. This would likely involve a second, narrower-band test applied to affiliated party sales in the aggregate.

• ''Quantity-cushion'' test.

Unlike the previous tests, this one would include or exclude sales to affiliates on the basis of a comparison of the quantity of merchandise sold to an affiliate to the quantity sold to unaffiliated customers at prices *at or below* the price to the affiliate and to the quantity sold to unaffiliated customers at prices *at or above* the price to the affiliate. Thus, sales to an affiliate could be considered ''in the ordinary course of trade'' and used in the normal value calculation only if there were a sufficient ''cushion'' of sales to unaffiliated parties priced *below* the average price to the affiliate, and a similar ''cushion'' of sales to unaffiliated parties priced *above* the average price to the affiliate. The primary concerns with this test were its complexity, calibrating the appropriate ''cushion'' size, determining how to apply the test by affiliate and whether it would be better applied to all affiliates combined by product, and questions as to whether this might not be an overly narrow definition of the ''normal'' price range of sales to affiliated parties.

Timetable

After considering all comments received, the Department intends to publish in the **Federal Register** a final notice of the new arm's-length methodology. *See* section 123(g)(1)(F) of the URAA (19 U.S.C. 3533(g)(1)(F)). This new methodology will address the objectives described above. In accordance with section 129(b) of the URAA (19 U.S.C. 3538(b)), this methodology will be utilized to prepare an amended final determination in the Japan Hot-Rolled investigation. In accordance with section 129(c)(1) of the URAA (19 U.S.C. 3538(c)(1)), this amended final determination will establish new cash deposit rates for all producers for whom the investigation rates are still applicable and will apply with respect to unliquidated entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption on or after the date on which the United States Trade Representative directs the Department to implement the amended final determination. With respect to other proceedings and other segments of the Japan hot-rolled proceeding, the new methodology will be applied in all reviews initiated on the basis of requests received on or after the first day of the month following the date of publication of the Department's final notice of the new arm's-length methodology, all investigations and other segments of proceedings initiated on the basis of petitions filed or requests made on or after such publication date, and all segments of proceedings self-initiated on or after such publication date.

Comments—Format

Parties wishing to comment should submit a signed original and six copies of each set of comments, including reasons for any recommendations, along with a cover letter identifying the commenter's name and address. To help simplify the processing and distribution of comments and rebuttals, the Department requests that a submission in electronic form accompany the required paper copies. Comments filed in electronic form should be on a DOS formatted 3.5″ diskette in either WordPerfect format or a format that the WordPerfect program can convert into WordPerfect.

Comments received on diskette will be made available to the public on the Web at the following address: *http://ia.ita.doc.gov/.* In addition, upon request, the Department will make comments filed in electronic form available to the public on 3.5″ diskettes (at cost) with specific instructions for accessing compressed data (if necessary). Any questions concerning file formatting, document conversion, access on the Web, or other electronic filing issues should be addressed to Andrew Lee Beller, IA Webmaster, at (202) 482–0866 or via e-mail at *andrew_lee_beller@ita.doc.gov.*

Dated: August 8, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–20771 Filed 8–14–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080602C]

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a joint meeting of its Shrimp Advisory Panel (AP) and Shrimp Bycatch Reduction Device (BRD) Advisory Panel in Charleston, SC.

DATES: The Shrimp AP and Shrimp BRD AP will meet jointly September 3, 2002 from 1:30 p.m. until 5 p.m. and September 4, 2002 from 8:30 a.m. until 5 p.m.

ADDRESSES: These meetings will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone: 843–571–1000.

Council address: South Atlantic Fishery Managment Council, One

Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: (843) 571–4366; fax: (843) 769–4520; email: kim.iverson@noaa.gov.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to further develop the options paper for Amendment 6 to the South Atlantic Shrimp Fishery Management Plan by including the advisory panels' input and recommendations. Management actions to be considered in Amendment 6 will include the required Sustainable Fisheries Act (SFA) criteria for all shrimp species, options to modify or remove the BRD Protocol from the Shrimp Fishery Management Plan and measures to reduce the level of turtle mortality. In relation to the increased number of turtle strandings observed, the Council is considering night time closures in the shrimp fishery as one of the options to remedy this situation.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (*see* **ADDRESSES**) by August 26, 2002.

Dated: August 9, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–20737 Filed 8–14–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071802A]

Marine Mammals; File No. 1013–1648

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. Patricia E. Mascarelli, Carribean Center for Marine Studies, P.O. Box 3197, Lajas, PR 00667, has been issued a permit to take humpback whales (*Megaptera novaeangliae*), spinner dolphins (*Stenella longirostris*), and bottlenose dolphins (*Tursiops truncatus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On November 14, 2001, notice was published in the **Federal Register** (66 FR 57040) that a request for a scientific research permit to take humpback whales, spinner dolphins, and bottlenose dolphins had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 1013–1648 authorizes takes of up to 50 humpback whales per year for 5 years by harassment from close approach for photo-identification, collection of sloughed skin, and behavioral observations for the purpose of estimating abundance, habitat use, and behavior. The permit also authorizes inadvertent harassment of up to 200 humpback whales per year and unlimited annual takes of spinner and bottlenose dolphins by inadvertent harassment during these activities.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: August 8, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–20736 Filed 8–14–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Rules for Patent Maintenance Fees

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the revision of a continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 15, 2002.

ADDRESSES: Direct all written comments to Susan K. Brown, Records Officer, Office of Data Management, Data Administration Division, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231; by telephone at (703) 308–7400; or by electronic mail at *susan.brown@uspto.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Robert J. Spar, Director, Office of Patent Legal Administration, USPTO, Washington, DC 20231; by telephone at (703) 308–5107; or by electronic mail at *bob.spar@uspto.gov.*

SUPPLEMENTARY INFORMATION

I. Abstract

Under 35 U.S.C. 41(b) and 37 CFR 1.20(e)–(g) and 1.362, the United States Patent and Trademark Office (USPTO) charges fees for maintaining in force all utility patents based on applications filed on or after December 12, 1980. Payment of these maintenance fees is required at 3½, 7½, and 11½ years after the date the patent was granted. If the payment of the appropriate maintenance fee is not received within a grace period of six months following each of the above intervals (at 4, 8, or 12 years after the date of grant), the patent will expire at that time as set forth in 37 CFR 1.362(g). If a patent has expired due to nonpayment of a maintenance fee, the

patentee may petition the USPTO to accept a delayed payment of the maintenance fee under 35 U.S.C. 41(c) and 37 CFR 1.378 by showing that the delayed payment was unavoidable or unintentional. Additionally, if the USPTO refuses to accept and record a maintenance fee that was filed prior to the expiration of a patent, the patentee may petition the Commissioner under 37 CFR 1.377 to accept and record the maintenance fee payment.

Payments of maintenance fees that are submitted during the six-month grace period or after the expiration of the patent must also include the appropriate surcharge as indicated by 37 CFR 1.20(h)–(i). Maintenance fees are not required for design or plant patents, or for reissue patents if the patent being reissued did not require maintenance fees. Submissions of maintenance fees and surcharges must include the relevant patent number and the United States application number in order to identify the patent for which the fee is being paid.

The rules of practice (37 CFR 1.33(d) and 1.363) permit applicants, patentees, assignees, or their representatives of record to specify a ''fee address'' for correspondence related to maintenance fees that is separate from the correspondence address associated with a patent or application. Only an address associated with a customer number can be established as a fee address. Customer numbers can be requested by using the Request for Customer Number form (PTO/SB/125), which is covered under OMB Control Number 0651–0035 ''Representative and Address Provisions.'' Maintaining a correct and updated address is necessary so that fee-related correspondence from the USPTO will be properly received by the applicant, patentee, assignee, or authorized representative. If a separate fee address is not specified for a patent or application, the USPTO will direct fee-related correspondence to the correspondence address of record.

The USPTO offers forms to assist the public with providing the information covered by this collection, including the information necessary to submit a patent maintenance fee payment, to file a petition to accept an unavoidably or unintentionally delayed maintenance fee payment, and to designate or change a fee address. Instead of submitting maintenance fee payments using the paper Maintenance Fee Transmittal Form (PTO/SB/45), customers may pay maintenance fees electronically over the Internet by using the Electronic Maintenance Fee Form, which is accessible through the USPTO Web site. Customers may use the Electronic Maintenance Fee Form to submit maintenance fee payments as well as surcharges incurred during the six-month grace period before patent expiration. However, to pay a maintenance fee after patent expiration, the maintenance fee payment and the appropriate delayed payment surcharge must be filed together with a Petition to Accept Unavoidably Delayed Payment under 37 CFR 1.378(b) or a Petition to Accept Unintentionally Delayed Payment under 37 CFR 1.378(c). These delayed payment submissions cannot be filed electronically over the Internet. In addition to accepting electronic payments by credit card or electronic funds transfer (EFT) through the USPTO Web site, the USPTO has also recently begun accepting online payments by USPTO deposit account. Otherwise, non-electronic payments may be made by check, credit card, or USPTO deposit account.

The USPTO is adding the Petition to Accept Payment of Maintenance Fees Prior to Expiration of Patent (37 CFR 1.377) to this collection. The public may use this petition to request that the Commissioner review a decision to refuse to accept the payment of a maintenance fee that was filed prior to the expiration of a patent. This petition is not a new requirement but was overlooked when this information collection was previously submitted for OMB approval. No forms are provided for this petition under 37 CFR 1.377.

II. Method of Collection

By mail, facsimile, or hand delivery to the USPTO. Maintenance fees and surcharges for fee payments made during the six-month grace period following each maintenance fee interval may also be submitted electronically over the Internet.

III. Data

OMB Number: 0651–0016.

Form Number(s): PTO/SB/45/47/65/66.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profits; not-for-profit institutions; and the Federal Government.

Estimated Number of Respondents: 348,110 responses per year.

Estimated Time Per Response: The USPTO estimates that it will take the public approximately 5 minutes (0.08 hours) to 8 hours to complete this information, depending on the form or petition. This includes time to gather the necessary information, prepare the form or petition, and submit the completed request. The USPTO estimates that it will take the public approximately 20 seconds (0.006 hours) to submit the Electronic Maintenance Fee Form.

Estimated Total Annual Respondent Burden Hours: 30,495 hours per year.

Estimated Total Annual Respondent Cost Burden: $1,705,170 per year. The USPTO expects that the Petition to Accept Unavoidably Delayed Payment of Maintenance Fees in an Expired Patent (37 CFR 1.378(b)) and the Petition to Accept Payment of Maintenance Fees Prior to Expiration of Patent (37 CFR 1.377) will be prepared by attorneys. Using the professional rate of $252 per hour for associate attorneys in private firms, the USPTO estimates that the respondent cost burden for submitting these petitions will be $897,120 per year. The USPTO expects that the other items in this collection will be prepared by paraprofessionals. Using the paraprofessional rate of $30 per hour, the USPTO estimates that the respondent cost burden for submitting the other items in this collection will be $808,050 per year, for a total annual respondent cost burden of $1,705,170 per year.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Maintenance Fee Transmittal Transactions	5 minutes	227,690	18,215
Electronic Maintenance Fee Transactions	20 seconds	31,050	186
Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b)).	8 hours	370	2,960
Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c)).	1 hour	1,550	1,550
Petition to Accept Payment of Maintenance Fee Prior to Expiration of Patent (37 CFR 1.377).	4 hours	A150	600

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
''Fee Address'' Indication Form	5 minutes	87,300	6,984
Total		348,110	30,495

Estimated Total Annual Non-hour Respondent Cost Burden: $369,755,939. There are no capital start-up costs or maintenance costs associated with this information collection. However, this collection does have annual (non-hour) costs in the form of recordkeeping costs, postage costs, and filing fees. The recordkeeping costs for this collection are associated with using the Electronic Maintenance Fee Form to submit maintenance fee payments over the Internet. It is recommended that users of the Electronic Maintenance Fee Form print and retain a copy of the updated payment statement that appears on the screen after the transaction has been completed as a receipt and proof of timely payment. The USPTO estimates that it will take 5 seconds (0.001 hours) to print a copy of the payment statement and that approximately 31,050 submissions per year will use the Electronic Maintenance Fee Form, for a total of 31 hours per year for printing this receipt. Using the paraprofessional rate of $30 per hour, the USPTO estimates that the recordkeeping cost associated with this collection will be $930 per year.

The public may submit the paper forms and petitions in this collection to the USPTO by mail through the United States Postal Service. If the submission is sent by first-class mail, the public may also include a signed certification of the date of mailing in order to receive credit for timely filing. The USPTO estimates that the average first-class postage cost for a mailed submission will be 49 cents, and that customers filing a Maintenance Fee Transmittal Form, a Petition to Accept Unavoidably Delayed Payment, a Petition to Accept Unintentionally Delayed Payment, a Petition to Accept Payment of Maintenance Fee Prior to Expiration of Patent, or a ''Fee Address'' Indication Form may choose to mail their submissions to the USPTO. Therefore, the USPTO estimates that up to 317,060 submissions per year may be mailed to the USPTO, for a total postage cost of $155,359 per year.

This collection also has filing costs in the form of patent maintenance fees as well as surcharges for late payment of maintenance fees. The filing costs for this submission are calculated using the proposed fees for FY 2003 that would be effective on October 1, 2002. Under 37 CFR 1.20(e)–(g), the patent maintenance fees due at 3½ years, 7½ years, and 11½ years after the date of grant would be $900, $2,070, and $3,170 respectively (or $450, $1,035, and $1,585 for small entities). The surcharge under 37 CFR 1.20(h) for paying a maintenance fee during the six-month grace period following the above intervals is $130 (or $65 for small entities). The surcharge under 37 CFR 1.20(i) for a petition to accept a maintenance fee after the six-month grace period for these intervals has expired is $700 where the delayed payment is shown to be unavoidable and $1,640 where the delayed payment is shown to be unintentional. The filing fee listed in 37 CFR 1.17(h) for a petition to accept the payment of a maintenance fee filed prior to the expiration of a patent is $130. The total estimated annual filing costs for this collection are calculated in the accompanying chart.

Fee or surcharge	Amount of fee or surcharge	Estimated annual responses	Estimated annual filing costs
Patent maintenance fee at 3½ years	$900	98,460	$88,614,000
Patent maintenance fee at 3½ years (small entity)	450	31,200	14,040,000
Patent maintenance fee at 7½ years	2,070	59,550	123,268,500
Patent maintenance fee at 7½ years (small entity)	1,035	15,040	15,566,400
Patent maintenance fee at 11½ years	3,170	35,350	112,059,500
Patent maintenance fee at 11½ years (small entity)	1,585	7,670	12,156,950
Surcharge for paying maintenance fee during the six-month grace period	130	5,050	656,500
Surcharge for paying maintenance fee during the six-month grace period (small entity)	65	6,420	417,300
Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b))	700	370	259,000
Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c))	1,640	1,550	2,542,000
Petition to Accept Payment of Maintenance Fee Prior to Expiration of Patent (37 CFR 1.377)	130	150	19,500
''Fee Address'' Indication Form	0	87,300	0
Total		348,110	369,599,650

The USPTO estimates that the total filing costs associated with this collection will be $369,599,650 per year. The total non-hour respondent cost burden for this collection in the form of recordkeeping costs, postage costs, and filing fees is $369,755,939 per year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.,* the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or

included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 6, 2002.

Susan K. Brown,

Records Officer, USPTO, Office of Data Management, Data Administration Division.

[FR Doc. 02–20671 Filed 8–14–02; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Community College of the Air Force

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: The Community College of the Air Force (CCAF) Board of Visitors will hold a meeting to review and discuss academic policies and issues relative to the operation of the college. Agenda items include a review of the operations of the CCAF and an update on the activities of the CCAF Policy Council. Members of the public who wish to make oral or written statements at the meeting should contact Second Lieutenant Richard W. Randolph, Designated Federal Officer for the Board, at the address below no later than 4 p.m. on 11 October 2002. Please mail or electronically mail all requests. Telephone requests will not be honored. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of the presentation materials must be given to Second Lieutenant Richard Randolph no later than three days prior to the time of the board meeting for distribution. Visual aids must be submitted to Second Lieutenant Richard Randolph on a 3 ½″ computer disc in Microsoft PowerPoint format no later than 4 p.m. on 11 October 2002 to allow sufficient time for virus scanning and formatting of the slides.

DATES: October 29, 2002.

ADDRESSES: Tyndall Conference Center Conference Room, Tyndall Air Force Base, Panama City, Florida 32403.

FOR FURTHER INFORMATION CONTACT: Second Lieutenant Richard Randolph, (334) 953–7322, Community College of the Air Force, 130 West Maxwell Boulevard, Maxwell Air Force Base, Alabama 36112–6613, or via electronic mail at *Richard.Randolph@maxwell.af.mil.*

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–20698 Filed 8–14–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting

AGENCY: Department of Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of the forthcoming meeting of the Federal Interagency Coordinating Council (FICC). Notice of this meeting is intended to inform members of the general public of their opportunity to attend the meeting. The FICC will engage in ongoing policy discussions related to young children with disabilities and their families. The meeting will be open and accessible to the general public.

FICC committee meetings will be held on September 18, 2002 in the Switzer Building, 330 C Street, SW., Washington, DC 20202.

DATE AND TIME: FICC Meeting: Thursday, September 19, 2002 from 9 a.m. to 4:30 p.m.

ADDRESSES: Hubert Humphrey Building, 200 Independence Avenue, SW., Room 505A, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Bobbi Stettner-Eaton or Obral Vance, U.S. Department of Education, 330 C Street, SW., Room 3080, Switzer Building, Washington, DC 20202. Telephone: (202) 205–5507 (press 3). Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–5637.

SUPPLEMENTARY INFORMATION: The FICC is established under section 644 of the Individuals with Disabilities Education Act (20 U.S.C. 1444). The FICC is established to: (1) Minimize duplication across Federal, State, and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and perschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by Dr. Robert H. Pasternack, Assistant Secretary for Special Education and Rehabilitative Services.

Individuals who need accommodations for a disability in order to attend the meeting (i.e., interpreting services, assistive listening devices, material in alternative format) should notify Obral Vance at (202) 205–5507 (press 3) or (202) 205–5637 (TDD) ten days in advance of the meeting. The meeting location is accessible to individuals with disabilities.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 330 C Street, SW., Room 3080, Switzer Building, Washington, DC 20202, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal holidays.

Loretta Petty Chittum,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–20669 Filed 8–14–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.007, 84.032, 84.033, 84.038, 84.063, 84.069, and 84.268]

Student Assistance General Provisions, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, Federal Work-Study, Federal Perkins Loan, Federal Pell Grant, Leveraging Educational Assistance Partnership, and William D. Ford Federal Direct Loan Programs; Notice of Deadline and Submission Dates for Receipt of Applications, Reports, and Other Documents for the 2002–2003 Award Year

SUMMARY: The Secretary announces deadline submission dates for receiving documents from institutions and applicants for assistance under the Federal student aid programs authorized under Title IV of the Higher Education Act of 1965, as amended for the 2002–2003 award year. The Federal student aid programs include the Federal Perkins Loan, Federal Work-Study,

Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, William D. Ford Federal Direct Loan, Federal Pell Grant, and Leveraging Educational Assistance Partnership programs.

These programs, administered by the U.S. Department of Education (Department), provide assistance to students attending eligible institutions of higher education to help them pay their educational costs.

Deadline and Submission Dates: See Tables A and B at the end of this notice.

Table A—Deadline Dates for Application Processing and Receipt of Student Aid Reports (SARs) or Institutional Student Information Records (ISIRs) by Institutions

Table A provides deadline dates for application processing, including corrections, and, for purposes of the Federal Pell Grant Program, receipt by institutions of valid Student Aid Reports (SARs) or valid Institutional Student Information Records (ISIRs).

Table B—Federal Pell Grant Program Submission Dates for Disbursement Information by Institutions

Beginning with the 2002–2003 award year, the Common Origination and Disbursement (COD) system replaces the Recipient Financial Management System (RFMS) for purposes of the Federal Pell Grant Program. There are two categories of institutions participating in COD: full-participant institutions and phase-in institutions. Full-participant institutions are institutions that interface directly with COD by using the COD common record. Phase-in institutions are institutions that send records to COD using the RFMS legacy record formats.

Table B provides the earliest submission and deadline dates for both full-participant institutions and phase-in institutions to submit Federal Pell Grant disbursement information.

In general, an institution must submit disbursement information no later than 30 days after disbursing or becoming aware of the need to adjust a student's Federal Pell Grant. The Secretary considers a disbursement of Federal Pell Grant funds to occur on the earlier of the date that the institution: (a) Credits those funds to a student's account in the institution's general ledger or any subledger of the general ledger, or (b) pays those funds to a student directly. The Secretary considers a disbursement to have occurred even if institutional funds are used in advance of receiving program funds from the Department (34 CFR 668.164(a)). An institution's failure to submit disbursement information within the required 30-day timeframe may result in an audit or program review finding for an institution. In addition, the Secretary may initiate an adverse action, such as a fine or other penalty for such failure.

Table B also provides the latest date an institution may request Year-To-Date records and administrative relief.

Proof of Delivery

If the documents are submitted by mail, the Secretary accepts as proof of delivery one of the following:

(1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(2) A legibly-dated U.S. Postal Service postmark.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method of proof of mailing, check with the post office at which the submission was mailed. The Secretary strongly encourages the use of First Class Mail.

(3) Other proof of mailing or delivery acceptable to the Secretary.

Other Sources for Detailed Information

The Department publishes a more detailed discussion of the Federal student aid application process in the following publications:

- 2002–2003 Student Guide.
- Funding Your Education.
- 2002–2003 High School Counselor's Handbook.
- A Guide to 2002–2003 SARs and ISIRs.
- 2002–2003 Federal Student Aid Handbook.

Additional information on the institutional reporting requirements for the Federal Pell Grant Program is also contained in the *Federal Student Aid Handbook.* These materials may be found at the Information for Financial Aid Professionals Web site at: *http://www.ifap.ed.gov.*

Applicable Regulations: The following regulations apply: (1) Student Assistance General Provisions, 34 CFR part 668 and (2) Federal Pell Grant Program, 34 CFR part 690.

FOR FURTHER INFORMATION CONTACT: Jacquelyn C. Butler, Program Specialist, U.S. Department of Education, Federal Student Aid, 830 First Street, NE., Union Center Plaza, room 93I1, Washington, DC 20202–5345. Telephone: (202) 377–4013.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

You may also view this document in text or PDF at the following site: *http://www.ifap.ed.gov.*

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 421–429, 1070a, 1070b–1070b–3, 1070c–1070c–4, 1071–1087–2, 1087a, and 1087aa–1087ii; 42 U.S.C. 2751–2756b.

Dated: August 12, 2002.

Candace M. Kane,

Acting, Chief Operating Officer, Federal Student Aid.

BILLING CODE 4000–01–P

Table A. Deadline Dates for Application Processing and Receipt of Student Aid Reports (SARs) or Institutional Student Information Records (ISIRs) by Institutions

Who Submits?	What is Submitted?	Where is it Submitted?	What is the Deadline Date for Receipt?
Student	Free Application for Federal Student Aid (FAFSA) on the Web, Renewal FAFSA on the Web, or FAFSA Express electronic application	Electronically to the Department's Central Processing System (CPS)	June 30, 2003*
	Signature Page (if required)	The address printed on the signature page	August 21, 2003
Student through an Institution	An electronic original or renewal application	Electronically to the Department's CPS	June 30, 2003*
Student	A paper original Free Application for Federal Student Aid (FAFSA) or paper Renewal FAFSA	The address printed on the FAFSA, Renewal FAFSA, or envelope provided with the form	June 30, 2003
Student	Correction on the Web	Electronically to the Department's CPS	August 15, 2003*
	Signature Page (if required)	The address printed on the signature page	August 21, 2003
Student through an Institution	Electronic corrections and requests for a duplicate SAR	Electronically to the Department's CPS	August 27, 2003*
Student	Corrections submitted using Part 2 of an SAR	The address printed on Part 2 of the SAR	August 15, 2003
Student	Change of address, change of institutions, and requests for a duplicate SAR	The address printed on Part 2 of the SAR	August 15, 2003
		The Federal Student Aid Information Center by calling 1-800-433-3243	August 27, 2003
Student	Verification documents	Institution	The earlier of:** - 90 days after the student's last date of enrollment; or - September 2, 2003
Student	Valid SAR (For Pell Only)	Institution	The earlier of: - the student's last date of enrollment; or - September 2, 2003
Student through the Department's CPS	Valid ISIR**** (For Pell Only)	Institution receives ISIR from the Department's CPS	
Student	Valid SAR after verification (For Pell Only)	Institution	The earlier of:*** - 90 days after the student's last date of enrollment; or - September 2, 2003
Student through the Department's CPS	Valid ISIR after verification**** (For Pell Only)	Institution receives ISIR from the Department's CPS	

* The deadline for electronic transactions is 11:59 p.m. (Central Time) on the deadline date. Transmissions must be completed and accepted by 12:00 midnight to meet the deadline. If transmissions are started before 12:00 midnight but are not completed until after 12:00 midnight, those transmissions will not meet the deadline. In addition, any transmission picked up on or just prior to the deadline date that gets rejected may not be able to be reprocessed because the deadline will have passed by the time the user gets the information notifying him/her of the reject.

** Although the Secretary has set this deadline date for the submission of verification documents to the institution, if corrections are required, the earlier deadline dates for submission of paper or electronic corrections must still be met.

*** The institution must have already received a SAR or ISIR with an eligible EFC while the student was enrolled and eligible for payment. Students completing verification while no longer enrolled will be paid based on the higher of the two EFCs.

****For this purpose, the date the ISIR transaction was processed by CPS is considered to be the date the institution received the ISIR. The CPS process date is on the 2002-2003 ISIR record layout, field 163. It is also printed on the first page of the SAR and ISIR.

Table B. Federal Pell Grant Submission Dates for Disbursement Information by Institutions

Who Submits?	What is Submitted?	Where is it Submitted?	What is the Earliest Submission and Deadline Date for Receipt?
Institutions	At least one acceptable disbursement must be submitted for each Federal Pell Grant recipient at the institution	To the Common Origination and Disbursement (COD) System: Full-participant Institutions http://cod.ed.gov or Student Aid Internet Gateway (SAIG) Phase-in Institutions Student Aid Internet Gateway (SAIG)	An institution may submit disbursement information as early as June 21, 2002, but no earlier than: (a) 30 calendar days prior to the disbursement date under the advance payment method; (b) 7 calendar days prior to the disbursement date under the just-in-time payment method; or (c) the date of disbursement under the reimbursement or cash monitoring payment methods. An institution is required to submit disbursement information no later than the earlier of: (a) 30 calendar days after the institution - makes a disbursement; or - becomes aware of the need to make an adjustment to previously reported disbursement data; or (b) September 30, 2003.* After September 30, 2003, an institution may submit disbursement information only: (a) for a downward adjustment of a previously reported award; or (b) based upon a program review or initial audit finding per 34 CFR 690.83.
	Requests for Year-To-Date Records	1. COD School Relations Center: 1-800-474-7268 2. SAIG	August 15, 2003**
	Request for administrative relief based on a natural disaster or other unusual circumstances, or an administrative error made by the Department or Departmental contractors	1. http://cod.ed.gov 2. by email: sfa.administrative.relief@ed.gov	February 2, 2004

* The deadline for electronic transactions is 11:59 p.m. on September 30, 2003. Transmissions must be completed and accepted by 12:00 midnight to meet the deadline. If transmissions are started before 12:00 midnight but are not completed until after 12:00 midnight, those transmissions will not meet the deadline. In addition, any transmission picked up on or just prior to the deadline date that gets rejected may not be able to be reprocessed because the deadline will have passed by the time the user gets the information notifying him/her of the reject.

** Year-To-Date records may be requested after this date, however, there may not be sufficient time for institutions to receive the file, create a record batch to report disbursement information, and submit the disbursement information to the Secretary by the September 30, 2003 deadline date for receipt of all 2002-2003 requests for payment.

NOTE: The COD System must accept origination data for a student from an institution before it accepts disbursement information from the institution for that student. Institutions may submit origination and disbursement data for a student in the same transmission. However, if the origination data is rejected, the disbursement data is rejected.

[FR Doc. 02–20725 Filed 8–14–02; 8:45 am]
BILLING CODE 4000–01–C

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 02–27: Research and Development for the Rare Isotope Accelerator; Correction

AGENCY: Department of Energy (DOE).
ACTION: Notice inviting grant applications; correction.

SUMMARY: The Department of Energy published a document in the **Federal Register** of August 8, 2002, announcing interest in receiving applications for Research and Development (R&D) projects directed at the proposed Rare Isotope Accelerator (RIA). The document contained incorrect addresses.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene A. Henry, (301) 903–6093.

Correction

In the **Federal Register** of August 8, 2002, in FR Doc. 02–20064, on page 51550, please make the following corrections:

On page 51550, under the heading **ADDRESSES**, in the second paragraph, the addresses to be used are:

If you are unable to submit the application through the IIPS, formal applications may be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290, ATTN: Program Notice 02–27.

When submitting applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when hand carried by the applicant, the following address must be used: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 02–27.

Also on page 51550, under the heading **FOR FURTHER INFORMATION CONTACT**, the address to be used is:

Dr. Eugene A. Henry, Nuclear Physics Division, Office of High Energy and Nuclear Physics, SC–23/Germantown Building, Office of Science, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290; telephone: (301) 903–6093; facsimile: (301) 903–3833; e-mail: *gene.henry@science.doe.gov.* The full text of the Program Notice 02–27 is available via the World Wide Web using the following Web site address: *http://www.sc.doe.gov/production/grants/grants.html.*

Issued in Washington, DC, on August 9, 2002.

Ralph H. De Lorenzo,

Acting Associate Director of Science for Resource Management.

[FR Doc. 02–20706 Filed 8–14–02; 8:45 am]
BILLING CODE 6450–02–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2188–084]

PPL Montana, LLC; Notice Rejecting Request for Rehearing

August 9, 2002.

By order issued June 11, 2002, the Commission approved a Comprehensive Recreation Plan filed by the licensee for the Missouri-Madision Project No. 2188, consisting of nine developments located on the Madison and Missouri Rivers in Gallatin, Madison, Lewis and Clark, and Cascade Counties, in southwestern Montana. A timely request for rehearing was filed by Stephen M. Ryberg.

Under section 313(a) of the Federal Power Act, 16 USC 825l(a), a request for rehearing may be filed only by a party to the proceeding. In order for Stephen M. Ryberg, to be a party to this proceeding, he must have filed a motion to intervene pursuant to Rule 214 of the Rules of Practice and Procedure, 18 CFR 385.214. Because Mr. Ryberg did not file a motion to intervene, he is not a party, and the rehearing request must be rejected.

This notice constitutes final agency action. Requests for rehearing by the Commission of this rejection notice must be filed within 30 days of the date of issuance of this notice, pursuant to 18 CFR 385.713.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20732 Filed 8–14–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–851–000]

Southern Company Services, Inc.; Notice of Comment Due Dates

August 9, 2002.

Take notice that, subsequent to the technical conference of August 7, 2002, the parties in this proceeding may file initial comments on or before August 29, 2002 and reply comments on or before September 12, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20734 Filed 8–14–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Projects Nos. 10461–002 and 10462–002, New York]

Erie Boulevard Hydropower L.P.; Notice of Availability of Final Environmental Assessment

August 8, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the applications for original licenses for Erie Boulevard Hydropower L.P.'s (Erie's) Parishville Hydroelectric Project and Allens Falls Hydroelectric Project, both located on the West Branch St. Regis River in St. Lawrence County, New York, and has prepared a Final Environmental Assessment (FEA) for the projects. Neither project occupies any lands of the United States.

The FEA contains the Commission staff's analysis of the potential environmental impacts of the projects and has concluded that licensing the projects, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the FEA is on file with the Commission and is available for public inspection. Additional information about the project is available from the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC Internet Web site (*http://www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at (202) 502–8222, TTY (202) 208–1659. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

For further information, contact Peter Leitzke at (202) 502–6059.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20733 Filed 8–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL02–6–000]

Notice of Inquiry Concerning Natural Gas Pipeline Negotiated Rate Policies and Practices; Notice of Extension of Time

August 8, 2002.

On July 26, 2002, the National Association of State Utility Consumer Advocates (NASUCA) filed a motion for an extension of time to file comments in response to the Commission's Notice of Inquiry (NOI) issued July 17, 2002, in the above-docketed proceeding. In its motion, the NASUCA states that because the issues presented in the NOI are of such significant importance to the natural gas industry and because of the press of other business, additional time is needed for the preparation of responsive comments. The motion further states that the Process Gas Consumers Group, the Interstate Natural Gas Association of America, the Natural Gas Supply Association and the American Gas Industry support the motion for additional time.

Upon consideration, notice is hereby given that an extension of time for filing comments on the NOI is granted to and including September 25, 2002. Reply comments shall be filed on or before October 25, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20738 Filed 8–14–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7260–1]

Food Safety Risk Analysis Clearinghouse; Public Meeting and Poster Presentations

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a public meeting cosponsored by the interagency Risk Assessment Consortium (RAC). This meeting will be hosted by Federal research scientists who deal with a broad array of food safety issues, and will be an open house poster session on the afternoon of September 18, 2002. The purpose of this public meeting is to provide an opportunity for the public to observe the breadth of food safety risk assessment expertise that is utilized by Federal agencies.

DATES: The public meeting will be held on September 18, 2002, 1 p.m. to 5 p.m.

ADDRESSES: The public meeting will be held at the Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, Room 1A001, College Park, Maryland 20740.

FOR FURTHER INFORMATION CONTACT: Jacqueline McQueen, Office of Research and Development (8104R), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, 202–564–6639, FAX 202–565–2916, e:mail: *mcqueen.jacqueline@epamail.epa.gov* or Tomeikah Williams, Center for Food Safety and Applied Nutrition (HFS–6), Food and Drug Administration, 5100 Paint Branch Parkway, College Park, Maryland 20740, 301–436–1675, FAX 301–436–2630, e-mail: *tomeikah.williams@cfsan.fda.gov.*

Registration: None required.

SUPPLEMENTARY INFORMATION: The Risk Assessment Consortium (RAC), which includes members from Federal agencies that have responsibilities for food safety risk analysis, was established under the President's Food Safety Initiative to advance the science of food safety risk assessment and to assist agencies in fulfilling their specific food safety regulatory mandates. Through the RAC, the agencies collectively work to enhance communication and coordination among the member agencies and promote the conduct of scientific research that will facilitate risk assessments.

The focus of this public meeting will be to demonstrate how the process of risk assessment is applied to many types of food safety issues, including bacterial contamination, food additives, pesticides, and antibiotic resistance. Scientists who work within the Food and Drug Administration (FDA), the U.S. Department of Agriculture (USDA), the Centers for Disease Control (CDC), and the Environmental Protection Agency (EPA), and other agencies will be presenting posters on how the scientific process applies to these many potential problems. Examples of topics that will be presented in the posters include pesticides, food additives, biotech-derived plant materials, natural contaminants such as mycotoxins, antibiotic resistance, and microbial hazards. A computer demonstration will also be available to show how changing certain assumptions in microbial risk assessments can greatly influence the results of many assessments and how the best available data are used to provide accurate predictions. A complete list of poster topics will be posted at: *http://www.foodriskclearinghouse.umd.edu/Risk_Assessment_Consortium.htm.*

Dated: August 9, 2002.

Kevin Y. Teichman,

Acting Director, Office of Science Policy, Office of Research and Development.

[FR Doc. 02–20743 Filed 8–14–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0136; FRL–7192–3]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, in the **Federal Register** of July 17, 2002 (67 FR 46976), EPA issued a notice of receipt of request for amendments by registrants to delete uses in certain pesticide registrations. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request on the **Federal Register**. In the DATES portion of the notice of receipt, EPA inadvertenly left the effective date for the Lindane registration off. This notice corrects the DATES portion of the July 17, 2002 notice of receipt to read as follows:

DATES: The deletions are effective on January 13, 2003,unless indicated otherwise. The deletions for Lindane registrations shown in Table 1 are effective August 17, 2002. The Agency will consider withdrawal requests postmarked on or before January 13, 2003.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable

registrant on or before, unless indicated otherwise, February 11, 2003.

ADDRESSES: Withdrawal requests may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0136 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5761; e-mail address: *hollins.james@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov*. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listing at *http://www.epa.gov/fedrgstr/*.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0136. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of this official record, which includes printed, paper versions of any electronic comments submitted during as applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Room 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 A.M. to 4:00 P.M., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Withdrawal Requests?

You may submit withdrawal requests through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0136 in the subject line on the first page of your response.

1. *By mail*. Submit your withdrawal request to: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your withdrawal request to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your withdrawal request electronically by e-mail to: *opp-docket@epa.gov*, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All withdrawal requests in electronic form must be identified by docket ID number OPP–2002–0136. Electronic withdrawal requests may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the withdrawal request that includes any information claimed as CBI, a copy of the withdrawal request that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Action is the Agency Taking?

This notice announces the Agency is correcting the DATES unit of this document to show that the deletions for Lindane registrations in Table 1 are effective on August 17, 2002.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 7, 2002.

Linda Vlier Moos,

Acting Director, Information Resources and Services Division.

[FR Doc. 02–20749 Filed 8–14–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–1956]

Public Safety National Coordination Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document advises interested persons of a meeting of the Public Safety National Coordination Committee (''NCC''), which will be held in Washington, DC. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC. This notice advises interested persons of the seventeenth meeting of the Public Safety National Coordination Committee.

DATES: September 20, 2002 at 9:30 a.m.-12:30 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, Michael J. Wilhelm, (202) 418–0680, e-mail *mwilhelm@fcc.gov*. Press Contact, Meribeth McCarrick, Wireless

Telecommunications Bureau, 202–418–0600, or e-mail *mmccarri@fcc.gov.*

SUPPLEMENTARY INFORMATION: Following is the complete text of the Public Notice: This Public Notice advises interested persons of the seventeenth meeting of the Public Safety National Coordination Committee (''NCC''), which will be held in Washington, DC. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC.

Dates: September 20, 2002.

Meeting Time: General Membership Meeting—9:30 a.m.-12:30 p.m.

The NCC Subcommittees will meet from 9 a.m. to 5:30 p.m. the previous day. The NCC General Membership Meeting will commence at 9:30 a.m. and continue until 12:30 p.m. The agenda for the NCC membership meeting is as follows:

1. Introduction and Welcoming Remarks.
2. Administrative Matters.
3. Report from the Interoperability Subcommittee.
4. Report from the Technology Subcommittee.
5. Report from the Implementation Subcommittee.
6. Public Discussion.
7. Action on Subcommittee Recommendations.
8. Other Business.
9. Upcoming Meeting Dates and Locations.
10. Closing Remarks.

The FCC has established the Public Safety National Coordination Committee, pursuant to the provisions of the Federal Advisory Committee Act, to advise the Commission on a variety of issues relating to the use of the 24 MHz of spectrum in the 764–776/794–806 MHz frequency bands (collectively, the 700 MHz band) that has been allocated to public safety services. See The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010 and Establishment of Rules and Requirements For Priority Access Service, WT Docket No. 96–86, First Report and Order and Third Notice of Proposed Rulemaking, FCC 98–191, 14 FCC Rcd 152 (1998), 63 FR 58645 (11–2–98).

The NCC has an open membership. Previous expressions of interest in membership have been received in response to several Public Notices inviting interested persons to become members and to participate in the NCC's processes. All persons who have previously identified themselves or have been designated as a representative of an organization are deemed members and are invited to attend. All other interested parties are hereby invited to attend and to participate in the NCC processes and its meetings and to become members of the Committee. This policy will ensure balanced participation. Members of the general public may attend the meeting. To attend the seventeenth meeting of the Public Safety National Coordination Committee, please RSVP to Joy Alford of the Policy and Rules Branch of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau of the FCC by calling (202) 418–0680, by faxing (202) 418–2643, or by E-mailing at *jalford@fcc.gov.* Please provide your name, the organization you represent, your phone number, fax number and e-mail address. This RSVP is for the purpose of determining the number of people who will attend this seventeeth meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. Persons requesting accommodations for hearing disabilities should contact Joy Alford immediately at (202) 418–7233 (TTY). Persons requesting accommodations for other physical disabilities should contact Joy Alford immediately at (202) 418–0694 or via e-mail at *jalford@fcc.gov.* The public may submit written comments to the NCC's Designated Federal Officer before the meeting.

Additional information about the NCC and NCC-related matters can be found on the NCC website located at: *http://wireless.fcc.gov/publicsafety/ncc.*

Federal Communications Commission.

Jeanne Kowalski,

Deputy Division Chief for Public Safety, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 02–20560 Filed 8–14–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

Date and Time: Tuesday, August 20, 2002 at 10 A.M.

Place: 999 E Street, NW., Washington, DC.

Status: This meeting will be closed to the public.

Items to be Discussed:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

Date and Time: Thursday, August 22 at 10 A.M.

Place: 999 E Street, NW., Washington, DC (ninth floor).

Status: This meeting will be open to the public.

Items to be Discussed:

Correction and Approval of Minutes.

Draft Advisory Opinion 2002–09: Target Wireless by counsel, Diana Hartstein.

Notice of Proposed Rulemaking on Fraudulent Solicitations, Disclaimers, Personal Use of Campaign Funds, Increased Civil Penalties, and Inaugural Committees.

Routine Administrative Matters.

Person to Contact for Information: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–20819 Filed 8–13–02; 11:11 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 02–12]

Bernard & Weldcraft Welding Equipment v. Supertrans International, Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint was filed by Bernard & Weldcraft Welding Equipment (''Complainant''), against Supertrans International Inc. (''Respondent''). The complaint was served on August 9, 2002. Complainant alleges that Respondent violated sections 10(b)(2)(A) and 10(d)(1) of the Shipping Act of 1984, 46 U.S.C. app. sections 1709(b)(2)(A) and (d)(4), by refusing to release certain cargo it committed to deliver in accordance with the terms of a bill of lading it issued, unless the consignee remits charges in excess of those set forth in Supertrans' tariff. Complainant seeks reparations and certain other relief set forth in its complaint.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61,

and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by August 11, 2003, and the final decision of the Commission shall be issued by December 12, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–20714 Filed 8–14–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 02–10]

All Flags Forwarding Inc.—Possible Violations of Sections 10(a)(1) and 19(d) of the Shipping Act of 1984, as Well as Section 19(c) of the Shipping Act of 1984 as Amended by the Ocean Shipping Reform Act of 1998; Order of Investigation and Hearing

Notice is given that on August 1, 2002, the Federal Maritime Commission served an Order of Investigation and Hearing on All Flags Forwarding, Inc. (''All Flags''). All Flags is a previously licensed ocean transportation intermediary (''OTI'') operating as a freight forwarder and a non-vessel-operating common carrier. Until May 12, 2002, All Flags maintained an ocean freight forwarder bond and an NVOCC bond. Subsequent to the termination of All Flags' financial responsibility on May 12, 2002, its OTI license was automatically revoked on the same date pursuant to the Commission's regulations at 46 CFR 515.26.

It appears that between April 2, 1997 and August 17, 1999, All Flags and its principals knowingly and willfully collected freight forwarder compensation from at least three ocean common carriers on thousands of shipments without performing any of the required functions. This activity appears to have resulted from another NVOCC consistently listing All Flags and the name of its President in the freight forwarder box on oceans bills of lading for shipments processed entirely by that NVOCC's employees. Furthermore, between April 18, 1997 and December 15, 1998, it appears that on at least twenty-one occasions All Flags and its principals knowingly and willfully shared a portion of the compensation with the NVOCC.

This proceeding therefore seeks to determine (1) whether All Flags violated section 10(a)(1) of the Shipping Act of 1984 (''1984 Act'') and 46 CFR 510.22(a) by directly allowing another NVOCC to obtain ocean transportation at less than the rates and charges otherwise applicable by knowingly and willfully sharing a portion of its unwarranted freight forwarder compensation with that NVOCC; (2) whether All Flags violated section 19(d) of the 1984 Act and 19(e) of the 1984 Act as amended, as well as 46 CFR parts 510 and 515 as amended, by knowingly and willfully obtaining freight forwarder compensation without performing the services required for the receipt of such compensation; (3) whether, in the event violations of sections 10(a)(1), 19(d), and 19(e) of the 1984 Act and/or 46 CFR parts 510 and 515 are found, civil penalties should be assessed and, if so the amount, and (4) whether, in the event violations are found, an appropriate cease and desist order should be issued.

The full text of the Order may be viewed on the Commission's home page at *http//www.fmc.gov/* or at the Office of the Secretary, Room 1046, 800 N. Capitol Street, NW., Washington, DC. Any person may file a petition for leave to intervene in accordance with 46 CFR 502.72.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–20672 Filed 8–14–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 02–11]

Empire United Lines Co., Inc.—Possible Violations of Sections 10(a)(1) and 10(b)(1) of the Shipping Act of 1984, and Section 10(b)(2)(A) of the Shipping Act of 1984 as Amended by the Ocean Shipping Reform Act of 1998, as Well as the Commission's Regulations at 46 CFR 515.31(e) as Amended; Order of Investigation and Hearing

Notice is given that on August 1, 2002, the Federal Maritime Commission served an Order of Investigation and Hearing on Empire United Lines Co., Inc. (''Empire'') an ocean transportation intermediary (''OTI'') operating as a non-vessel-operating common carrier. It appears that, with respect to thousands of shipments between April 2, 1997 and October 5, 1999, Empire knowingly and willfully provided false information by listing a freight forwarder on numerous bills of lading for Empire's shipments thereby allowing the freight forwarder to collect unwarranted compensation from several ocean common carriers. Also, between April 18, 1997 and December 15, 1998, it appears that on at least twenty-one occasions Empire collected a portion of the unwarranted compensation from the freight forwarder through invoices for various alleged services and products. It further appears that during the same approximate time period, Empire processed twenty shipments documented by invoices that indicate that the rates assessed and collected differ from those set forth in Empire's ATFI tariff.

This proceeding therefore seeks to determine (1) whether Empire violated section 10(a)(1) of the Shipping Act of 1984 (''1984 Act'') by knowingly and willfully obtaining transportation at less than the rates and charges otherwise applicable by the receipt of an unlawful rebate resulting from Empire's collection of a portion of unwarranted freight forwarder compensation from another OTI; whether Empire violated section 10(b)(1) of the 1984 Act and 10(b)(2)(A) of the 1984 Act as amended, by charging different compensation for the transportation of property than the rates set forth in its published tariff; whether Empire violated the Commission's regulations at 46 CFR 515.31(e) as amended, by knowingly and willfully providing false information to several ocean common carriers on documents concerning Empire's shipments; whether, in the event violations of sections 10(a)(1), 10(b), and 10(b)(2)(A) of the 1984 Act and/or 46 CFR 515.31(e) are found, civil penalties should be assessed against Empire and, if so, the amount of the penalties to be assessed; whether, in the event violations of sections 10(a)(1) and 10(b)(1) of the 1984 Act are found, the tariff of Empire should be suspended; whether the OTI license of Empire should be suspended or revoked; and whether, in the event violations are found, an appropriate cease and desist order should be issued.

The full text of the Order may be viewed on the Commission's home page at *http//www.fmc.gov/* or at the Office of the Secretary, Room 1046, 800 N. Capitol Street, NW., Washington, DC. Any person may file a petition for leave

to intervene in accordance with 46 CFR 502.72.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–20673 Filed 8–14–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 9, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. First Citizens Bancorporation of South Carolina, Inc., Columbia, South Carolina; to merge with C B Financial Corp., Warrenton, Georgia, and thereby indirectly acquire Citizens Bank, Warrenton, Georgia.

B. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. MCB Financial Group, Inc., Carrollton, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of McIntosh Commercial Bank (in organization), Carrollton, Georgia.

2. GB&T Bancshares, Inc., Gainesville, Georgia; to acquire 100 percent of the voting shares of Hometown Bank of Villa Rica, Villa Rica, Georgia.

3. NW Services Corporation, Ringgold, Georgia; to acquire 100 percent of the voting shares of The Bank of Sharon, Sharon, Tennessee.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. State Capital Corporation, and State Bank & Trust Company Employee Stock Ownership Plan, both of Greenwood Mississippi; to acquire up to 100 percent of the voting shares of Mississippi Southern Bank, Port Gibson, Mississippi.

2. State Bank & Trust Company Employee Stock Ownership Plan, Greenwood, Mississippi; to become a bank holding company by acquiring 25.08 percent of the voting shares of State Capital Corporation, Greenwood, Mississippi, and thereby indirectly acquire State Bank & Trust Company, Cleveland, Mississippi

D. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. New Corporation, Oakland, California; to become a bank holding company by acquiring 100 percent of the voting shares of Met Financial Corporation, Oakland, California, and thereby indirectly acquire Metropolitan Bank, Oakland, California.

Board of Governors of the Federal Reserve System, August 9, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–20680 Filed 8–14–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02083]

Cooperative Agreement for the Development of International Surveillance Systems, Enhancement of Epidemiologic Practice, and the Development of Epidemiologic Training Programs, Workshops, and Conferences for Ministries of Health (MOH) and Other International Health Organizations; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for the development of international surveillance systems, enhancement of epidemiologic practice, and the development of epidemiologic training programs, workshops, and conferences for Ministries of Health (MOH) and international health organizations.

The purpose of this program is to provide leadership and technical assistance activities to assure that international health organizations have the infrastructure to support effective epidemiologic activities that are essential in providing public health services.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals encourage Ministries of Healths to develop efficient and comprehensive public health information and surveillance systems by promoting the use of the internet and by focusing on development of standards for communications and data elements and Efficiently respond to the needs of our Ministries of Health partners through the provision of epidemiologic assistance.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301 and 307 of the Public Health Service Act, [42 U.S.C. sections 241 and 242l, as amended]. The Catalog of Federal Domestic Assistance number is 93.283

C. Eligible Applicants

Assistance will be limited to organizations that have at least one year proven scientific and technical experience to carry out international

programs in public health, especially epidemiology and surveillance.

First priority will be given to organizations that can show established relationships with governmental institutions such as Ministries of Health, national disease prevention and control programs, academic institutions and international organizations.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Availability of Funds

Approximately $200,000 is available in FY 2002 to fund one award. Funds will be allocated to individually described and budgeted projects or activities which will comprise the overall cooperative agreement. Individual projects are expected to range from $1,000 to $200,000. It is expected that the award will begin on or about September 30, 2002 and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Matching funds is not a requirement for this program announcement.

Continuation award within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

1. All requests for funds contained in the budget, shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through issuance of supplemental awards.

2. By making this statement all requests, not only the initial budget but any subsequent request such as redirection, requests for supplemental funds, carry-overs, *etc.* are included. This is Health and Human Services (HHS) policy.

3. Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives, however, prior approval by CDC officials must be requested in writing.

4. The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: Indirect costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

5. The applicant may contract with other organizations under this program; however, the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required).

6. Limitations and/or prohibitions on the use of funds are as follows:

a. Alterations and renovations are not allowable.

b. Customs and import duties, including consular fees, customs surtax, value-added taxes and other related charges.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. Develop new and enhance existing collaborations with field research.

b. Provide scientists to work abroad and to train other health workers abroad.

c. Conduct assessments to identify minimum standards of various public health epidemiology practices, capacities and staffing.

d. Identify, develop and monitor the types of information, technical assistance, technical capacity and training needed to implement an Integrated Disease Surveillance System.

e. Ensure mechanisms for the evaluation and/or quality assurance of existing and pre-accreditation of new training programs.

f. Assure participation in CDC outbreak investigation teams to strengthen global epidemic preparedness and response capacity.

g. Build partnerships to enhance global and regional public health capacity.

h. Support travel to meetings, collaborative investigations, training, *etc.*

i. Conduct assessments of epidemiologic training, resources and technology needs of local health organizations.

j. Provide and support training workshops, seminars, and conferences (attendance).

k. Provide aid with program planning and program surveillance.

l. Collect and analyze data to evaluate epidemiology's contribution to public health and increase the infrastructure for surveillance and epidemiologic capacity.

m. Develop and maintain an officially recognized forum for the regional, national and international exchange of epidemiologic and other public health information (*e.g.,* conduct annual meeting to discuss policy issues and recommendations).

n. Provide leadership and technical assistance activities to ensure that local, regional, national, and international health departments/ministries of health have the infrastructure to provide essential public health services effectively.

o. Identify and propose projects or activities in response to findings above.

2. CDC Activities

a. Provide consultation and assistance in planning and implementing program activities when needed.

b. Assist in establishing partnerships that will build global public health capacity and increase laboratory support.

c. Assist in the preparation and implementation of trainings and conferences.

d. Provide technical assistance from several Centers, Institutes, and Offices (CIOs) within the CDC.

e. Assist in the development of field-based (competency based) training programs.

f. Engage the collective strength of all field-based training programs to chart the directions, scope and priorities for public health initiatives.

g. Provide science-based collaboration and technical assistance in developing and implementing evaluation strategies for the program.

h. Assist in supporting an annual forum for local, regional, national, and international exchange of epidemiologic and other public health information.

F. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. Provide a detailed budget and justification for each individual project or major activity. In the applications to CDC for funding, include projects or activities which: (a) Provide benefit to multiple regions/countries or (b) promote epidemiologic practice and public health surveillance of regional/national/international significance to assure that infrastructures are in place to provide essential public health services.

The narrative should be no more than twenty double-spaced pages, printed on

one side, with one-inch margins, and unreduced fonts. Narrative should include: Understanding the Need or Problem, Technical Approach, Ability to Carry Out the Project, Personnel, Management Plan, and Budget.

G. Submission and Deadline

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available at the following Internet address:

http://www.cdc.gov/od/pgo/forminfo.htm. Forms may also be obtained by contacting the Grants Management Specialist in the ''where to Obtain Additional Information'' section of this announcement. Forms may not be submitted electronically.

Forms must be submitted in the following order:

Cover Letter

Table of Contents

Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
Human Subject Certification
Narrative

On or before September 16, 2002, submit the application to the: Technical Information Management Section, 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341.

Deadline: Applications must shall be considered as meeting the deadline if they are: Received on or before the deadline date.

Late Applications: Applications which do not meet the criteria above will be returned to the applicant.

H. Evaluation Criteria

Application

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant or cooperative agreement. Measures of Effectiveness must relate to the performance goal (or goals) as stated in section ''A. Purpose'' of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

The application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Technical Approach (30 points)

The extent to which the application addresses:

a. An overall design strategy, including measurable time lines.

b. The relationship between activities and objectives.

c. Description of the management and analysis of data collected for meeting objectives.

2. Ability to carry out the project (30 points)

The extent to which the applicant provides evidence of its ability to carry out the proposed activity or project and the extent to which the applicant documents the demonstrated capability to achieve the purpose of this project.

3. Understanding of the need or problem (20 points)

The extent to which the applicant demonstrates a clear, concise understanding of the nature of the need or problem to be addressed.

a. Extent to which the applicant specifically includes a description of the public health importance of the planned activities to be undertaken.

b. Extent to which the applicant provides a realistic presentation of the proposed project.

4. Personnel (10 points)

The extent to which professional personnel involved in this activity or project are qualified, including evidence of prior experience similar to this activity or project. (Complete Curricula vitae should be provided for professional and senior administrative staff; relevant training and experience should be highlighted). If a position is vacant, a position description and complete description of required qualifications for that position are to be included in the application along with a specific plan (including time line) for hiring.

5. Management plan (10 points)

The extent to which the applicant provides a description of the systems and procedures which will be used to manage the progress, budget and operations of the activity or project.

6. Budget (Not Scored)

Extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

I. Other Requirements

Technical Reporting Requirements

An original and two copies of an annual progress report is required to be submitted each year with the continuation application. A financial status report (FSR) is due 90 days after the end of each budget period. An original and two copies of a final performance report and FSR are due no later than 90 days after the end of the project period.

Progress Reporting Requirements

1. A comparison of actual accomplishments to the goals established for the period.

2. The reasons for which established goals were not met.

3. Other pertinent information including, when appropriate, analysis and explanation of any unexpectedly high costs for performance.

4. Provide measures of effectiveness to evaluate the accomplishment of the various identified objectives of the cooperative agreement. These measures must be objective and must measure the intended outcome. The submission of these measures shall be a data element to be submitted with, or incorporated, into the semiannual progress reports.

Fiscal Reporting Requirements

1. Awardee is required to obtain annual audit of these CDC funds (program-specific audit) by a U.S. based audit firm with International branches and current licensure/authority in country, and in accordance with International Accounting Standards, or equivalent standard(s) approved in writing by CDC.

2. A fiscal Recipient Capability Assessment may be required, for pre award or post award, with the potential awardee in order to review their business management and fiscal capabilities regarding the handling of U.S. Federal funds.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page

Internet address—*http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Terrie Brown, Grants Management Specialist, International & Territories Acquisition & Assistance Branch Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone number (770) 488–2638. E-mail address *aie9@cdc.gov.*

For program technical assistance, contact:

Dr. Ed Maes, Associate Director for Science Division of International Health, Epidemiology Program Office, Centers for Disease Control and Prevention, 4770 Buford Highway, MS—K72, Atlanta, GA 30341. Telephone Number (770) 488–8163. E-mail address *efm1@cdc.gov*;

or

Dianne Wylie, Public Health Advisor, Division of International Health, Epidemiology Program Office, Centers for Disease Control and Prevention, 4770 Buford Highway, MS—K72, Atlanta, GA 30341. Telephone Number (770) 488–8325 or 8322. E-mail address *mdw1@cdc.gov.*

Dated: August 9, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–20704 Filed 8–14–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Tobacco Use Supplement to the Current Population Survey: 2003 Tobacco Use Special Cessation Supplement to CPS

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Tobacco Use Supplement to the Current Population Survey: 2003 Tobacco Use Special Cessation Supplement to CPS.

Type of information request: Revision of OMB #0925–0368, Expiration 02/28/2003.

Need and Use of Information Collection: The 2003 Tobacco Use Special Cessation Supplement to the Current Population Survey conducted by the Census Bureau will collect data from the civilian non-institutionalized population on tobacco use and smoking prevalence, cessation behavior (*i.e.,* quit attempts, successful quitting), use of cessation products and methods, measure level of addiction and plans to quit, workplace smoking policies, health professional advice to stop smoking, and use of different types of cigarettes and potential harm reduction products. This survey will provide invaluable information to government agencies, other scientists and the general public necessary for tobacco control research, as well as measure progress toward tobacco control as part of the National Cancer Institute's Extraordinary Opportunities in Tobacco Research. This survey is part of a continuing series of surveys that were sponsored by NCI and fielded periodically over the 1990's by the Census Bureau as part of the American Stop Smoking Intervention Study for Cancer Prevention (ASSIST) project and made available for general public use. The Tobacco Use Supplements will be continuing over the next decade alternating between a standard or core tobacco use survey (such as the 2001–2002 survey) and a special topic survey focusing on emerging adult tobacco control issues (such as this 2003 Tobacco Use Special Cessation Supplement). The survey will allow state specific estimates to be made. Data will be collected in February 2003, June 2003 and November 2003 from approximately 265,000 respondents. The National Cancer Institute is co-sponsoring this survey with the Centers for Disease Control and Prevention.

Frequency of Response: One-time study.

Affected Public: Individuals or households.

Type of respondents: Person 15 years of age or older. The total reporting burden is as follows:

Estimated Number of Respondents: 265,000;

Estimated Number of Responses per Respondent: 1;

Average Burden Hours per Response: 0.1169; and

Estimated Total Burden Hours Requested: 30,980. The total cost to respondents is estimated at $309,800. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Anne Hartman, Health Statistician, National Cancer Institute, Executive Plaza North, Suite 4005, Bethesda, Maryland 20892–7344, or call non-toll free (301) 496–4970, or FAX your request, to (301) 435–3710, or e-mail your request, including your address, to *ah42t@nih.gov* or *Anne_Hartman@nih.gov.*

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: August 5, 2002.

Reesa Nichols,

OMB Project Liaison Officer.

[FR Doc. 02–20692 Filed 8–14–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; an Evaluation of the National Cancer Institute Science Enrichment Program

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and

approval of the information collection listed below. The purpose of this notice is to allow 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: An Evaluation of the NCI Science Enrichment Program (SEP).

Type of Information Collection Request: New.

Need and Use of Information Collection: This evaluation will assess the effectiveness of the NCI SEP in making progress toward its goals of: (1) encouraging under-represented minority and under-served students who have just completed ninth grade to select careers in science, mathematics, and/or research, and (2) broadening and enriching students' science, research, and sociocultural backgrounds. The program is a 5 to 6-week residential program taking place on two university campuses—University of Kentucky, Lexington and San Diego State University. The 5-year evaluation is designed as a controlled, longitudinal study, consisting of the five SEP cohorts and three cohorts of control group students who do not attend the program. The evaluation will provide NCI with valuable information regarding specific components that promote or limit the program's effectiveness, the extent to which the program has been implemented as planned, how much the two regional programs vary, and how the program can be improved or made more effective. NCI will use this information to make decisions regarding continuation and expansion of the program.

Frequency of Response: Semi-annually.

Affected Public: Individuals or households and Federal Government.

Type of Respondents: High School and College students and parents. There is no estimated cost to respondents. The annual reporting burden is as follows:

Type of respondents	Average number of respond-ents/year	Frequency of response	Average time per response	Average an-nual hour burden
Estimates of Hour Burden: Burden Not Previously Approved (1998–2002)				
SEP Participants	200	1	0.5	100
Control Group Students	200	1	0.5	100
Control Group Students	100	[1]	1.00	100
Total	500			300
Estimates of Hour Burden: Burden Requested (2003)				
SEP Participants	500	([2])	0.5	250
Control Group Students	300	([2])	0.5	150
Total	800			400

[1] 2 (pre and post). [2] 1 (follow up).

There are no Capitol Costs, Operating costs, and/or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in the notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Mr. Frank Jackson, Office of Special Populations Research, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 602, Rockville, MD 20852, or call non-toll-free number (301) 496–8589, or e-mail your request, including your address to: *fj12i@nih.gov.*

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 30 days of this publication.

Dated: August 8, 2002.

Reesa Nichols,

NCI Project Clearance Liaison.

[FR Doc. 02–20693 Filed 8–14–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of person privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 13, 2002.

Time: 1 pm to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Michael Micklin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892. (301) 435–1258. *micklinm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ''Maternal Cigarette Smoking and Toddler Self-Regulation.''

Date: August 14, 2002.

Time: 2 pm to 3:15 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Michael Micklin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892. (301) 435–1258. *micklinm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Anti-Emetics.

Date: August 20, 2002.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892. (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20694 Filed 8–14–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act; as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Board of Governors of the Warren Grant Magnuson Clinical Center.

Date: September 20, 2002.

Time: 9 to 12.

Agenda: Updates on organizational planning and budget issues.

Place: National Institutes of Health, Clinical Center Medical Board Room, 2C116, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Maureen E Gormley, Executive Secretary, Warren Grant Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C146, Bethesda, MD 20892, 301/496–2897.

Information is also available on the Institute's/Center's home page: *http://www.cc.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

Dated: August 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20695 Filed 8–14–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey.

Technology Transfer Act of 1986

AGENCY: U.S. Geological Survey.

ACTION: Notice of Proposed Cooperative Research & Development Agreement (CRADA) Negotiations.

SUMMARY: The United States Geological Survey (USGS) is contemplating entering into a Cooperative Research and Development Agreement (CRADA) with Advanced Data Mining, LLC to develop advanced data mining and data visualization capabilities for complex hyrological modeling.

Inquiries: If any other parties are interested in similar activities with the USGS, please contact Paul Conrads, USGS South Carolina Water District, Stephenson Center, Suite 129, 720 Gracern Road, Columbia, SC 29210, phone: (803) 750–6140.

SUPPLEMENTARY INFORMATION: This Notice is submitted to meet the USGS policy requirements stipulated in Survey Manual Chapter 500.20.

Dated: July 30, 2002.

Robert M. Hirsch,

Associate Director for Water.

[FR Doc. 02–20723 Filed 8–14–02; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Patent Trademark & Copyright Act

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of prospective intent to award partially exclusive licenses.

SUMMARY: The United States Geological Survey (USGS) is contemplating the award of partially exclusive licenses to: Columbia Analytic Services, Inc. of Kelso, WA and EON Products Inc. of Snellville, GA on U.S. Patent No. 5 804 743, a Downhole Passive Water Sampler and Method of Sampling.

Inquiries: If any other parties are interested in similar activities, or have comments relating to the award please contact Julia M. Giller, 12201 Sunrise Valley Drive, MS 500, Reston, VA 21092, phone: (703) 648–4403.

SUPPLEMENTARY INFORMATION: This notice is submitted to meet the requirements of 35 U.S.C. 208.

Dated: July 30, 2002.

Robert M. Hirsch,

Associate Director for Water.

[FR Doc. 02–20724 Filed 8–14–02; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1920–ET–4138; NVN–50250]

Public Land Order No. 7534; Extension of Public Land Order No. 6802; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order extends Public Land Order No. 6802 until January 31, 2010. This extension is necessary in order for the Department of Energy to maintain the physical integrity of the subsurface environment to ensure that scientific studies for site

characterization at Yucca Mountain are not invalidated or otherwise adversely impacted.

EFFECTIVE DATE: September 25, 2002.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, PO Box 12000, Reno, Nevada 89520–0006, 775–861–6532.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 6802 (55 FR 39152, September 25, 1990), which withdrew 4,255.50 acres of public land in order to maintain the physical integrity of the subsurface environment to ensure that scientific studies for site characterization by the Department of Energy at Yucca Mountain are not invalidated or otherwise adversely impacted, is hereby extended until January 31, 2010.

2. Public Land Order No. 6802 will expire on January 31, 2010, unless, as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: July 31, 2002.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 02–20720 Filed 8–14–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1430–EU; WYW 153358]

Termination of Segregative Effect of Mineral Conveyance Application and Opening of Land; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the temporary segregative effect as to 2,920.00 acres of public land which was originally included in an application for conveyance of Federally owned mineral interests in Carbon County, Wyoming.

EFFECTIVE DATE: August 15, 2002.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM Wyoming State Office, 5353 Yellowstone Rd., P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6115.

SUPPLEMENTARY INFORMATION: Pursuant to the regulations contained in 43 CFR 2091.2–2(2), at 9 a.m. on August 15, 2002, the following described lands will be relieved of the temporary segregative effect of mineral conveyance application WYW 153358:

Sixth Principal Meridian, Wyoming

T. 16 N., R. 82 W.,
sec. 13, SE¼, E½SW¼, NW¼SW¼, SW¼NW¼;
sec. 14, S½SW¼;
sec. 22, S½SE¼;
sec. 23, E½, E½W½, SW¼SW¼;
sec. 24, all;
sec. 25, N½;
sec. 26, N½, N½S½, SW¼SW¼;
sec. 27, E½, E½SW¼, SW¼SW½.

The above described lands contains 2,920 acres in Carbon County.

Dated: January 16, 2002.

Melvin Schlagel,

Realty Officer, Branch of Fluid Minerals, Lands & Appraisal.

Editorial note: This document was received at the Office of the Federal Register August 9, 2002.

[FR Doc. 02–20566 Filed 8–14–02; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

Proposed Agency Information Collection; Comment Request

AGENCY: International Trade Commission.

ACTION: Notice of proposed information collection and request for comment.

EFFECTIVE DATE: August 9, 2002.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1995, the U.S. International Trade Commission intends to seek approval from the Office of Management and Budget (OMB) for renewal of a currently approved collection (OMB No.: 3117–0188) for the purpose of obtaining feedback from readers of Commission reports to help meet regular program assessment requirements. Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number (5 CFR 1320.8(b)(3)(vi)). Under Pub. L. 103–62, the Government Performance and Results Act of 1993, the U.S. International Trade Commission is seeking a long-term, continuing means for conducting program evaluations by using the proposed one-page collection, *USITC Reader Satisfaction Survey,* to help determine the extent to which USITC reports effectively meet the needs of customers. Comments concerning the proposed information collection are requested in accordance with 5 CFR 1320.8(d).

DATES: To be assured of consideration, written comments must be received at the Commission no later than 5:15 p.m. on October 9, 2002.

ADDRESSES: A signed original and eight copies of each set of comments on this proposed information collection, along with a cover letter, should be submitted by mail or by hand delivery to Marilyn R. Abbott, Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Karl Tsuji, Office of Industries, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436 (telephone No. 202–205–3434). The proposed information collection, for which the Commission intends to request approval from OMB for renewal, follows this notice. Copies of the draft Supporting Statement to be submitted to the OMB will be posted on the Commission's World Wide Web site at *http://www.usitc.gov* or may be obtained from Karl Tsuji, at the above address or telephone number. Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal (telephone No. 202–205–1810).

SUPPLEMENTARY INFORMATION:

Request for Comments

Comments are solicited as to: (1) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (3) the quality, utility, and clarity of the information to be collected; and (4) minimization of the burden of the proposed information collection on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Summary of the Proposed Information Collection

Pub. L. 103–62, the Government Performance and Results Act of 1993, enacted on August 3, 1993, sets forth objectives for Federal agencies to, among other things, initiate measures to improve information on program performance and, specifically, to focus

on evaluating results, quality, and customer satisfaction. The one-page survey asks for voluntary input from respondents by circling responses that indicate an assessment of reader satisfaction regarding the value and quality of Commission reports. The ''tear-out'' survey is being placed inside the cover of certain reports (and is included with the PDF format placed on the USITC Internet site) issued by the Commission (excluding Title VII reports for which a separate survey is being designed), including all public studies requested by the Congress and the United States Trade Representative, or reports conducted by the USITC on its own motion, pursuant to section 332 of the Tariff Act of 1930 (19 U.S.C. 1332(g)), and other public reports that meet agency program requirements for a research program set forth in its Strategic Plan (available on the agency's World Wide Web site at *http://www.usitc.gov*). Following are highlights of the proposed information collection:

(1) *Number of forms to be submitted:* One single-page form.

(2) *Title of form:* USITC Reader Satisfaction Survey.

(3) *Type of request:* Proposed renewal of a currently approved collection.

(4) *Frequency of use:* Annual or on occasion information gathering.

(5) *Description of Respondents:* Interested parties receiving most public reports issued by the USITC, with the exception of Title VII reports.

(6) *Estimated number of respondents:* 600 annually.

(7) *Estimated total number of hours to complete the forms:* 100 hours annually.

(8) *Recordkeeping burden:* There is no retention period for recordkeeping required.

(9) *Response burden:* Less than 10 minutes for each individual respondent.

(10) *Summary of the collection of information:* Single-page survey requests readers' comments about value and quality of USITC reports.

(11) Information requested on a voluntary basis is not proprietary in nature, but rather for program evaluation purposes and is not intended to be published. Commission treatment of questionnaire responses will be followed; responses will be aggregated and will not be presented in a manner that will reveal the individual parties that supplied the information.

Although the *USITC Reader Satisfaction Survey* will be made available on the Commission's Web site, comments on the survey must be in paper form.

By order of the Commission.
Issued: August 9, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

USITC Reader Satisfaction Survey

[Title of Report]

The U.S. International Trade Commission (USITC) is interested in your voluntary comments (burden less than 10 minutes) to help assess the value and quality of our reports, and to assist in improving future products. Please return survey by facsimile (202–205–3161) or by mail to the USITC, or visit the USITC Internet home page (*www.usitc.gov*) to electronically submit a Web version of the survey.

(Please print—*responses below not for attribution*)

Your name and title: _____
Organization (if applicable): _____
Which format is most useful to you? ☐ CD–ROM ☐ Hardcopy ☐ USITC Internet site
Circle your assessment of each factor below: SA = strongly agree, A = agree, N = no opinion, D = disagree, or SD = strongly disagree.

Value of this report:					
Statistical data are useful	SA	A	N	D	SD
Other non-numerical facts are useful	SA	A	N	D	SD
Analysis augments statistical data/other facts	SA	A	N	D	SD
Relevant topic(s)/subject matter	SA	A	N	D	SD
Primary or leading source of information on this subject	SA	A	N	D	SD
Quality of this report:					
Clearly written	SA	A	N	D	SD
Key issues are addressed	SA	A	N	D	SD
Charts and graphs aid understanding	SA	A	N	D	SD
References cite pertinent sources	SA	A	N	D	SD

Other preferred source of information on this subject: _____
Specify chapters, sections, or topics in report that are most useful:
Identify any type of additional information that should have been included in report:
Suggestions for improving report:
Please update your mailing and electronic addresses below (voluntary)__
Mailing address: _____
City, state, and zip code: _____
E-mail address: _____

[FR Doc. 02–20670 Filed 8–14–02; 8:45 am]
BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–747 (Review)]

Fresh Tomatoes From Mexico

AGENCY: International Trade Commission.

ACTION: Termination of review.

SUMMARY: On July 30, 2002, the Department of Commerce terminated its review of the suspended investigation on fresh tomatoes from Mexico (67 FR 50858, August 6, 2002). The basis for the termination is the withdrawal from the suspension agreement by Mexican tomato growers which account for a significant percentage of all fresh tomatoes imported into the United States from Mexico. Because the suspension agreement no longer covers substantially all imports of fresh tomatoes from Mexico, the Department of Commerce terminated the suspension agreement, terminated the review, and resumed the antidumping investigation. Accordingly, the U.S. International Trade Commission gives notice of the termination of its review involving imports from Mexico of fresh tomatoes, provided for in subheadings 0702.00 and 9906.07.01 through 9906.07.09 of the Harmonized Tariff Schedule of the United States.

EFFECTIVE DATE: July 30, 2002.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that

information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

Authority: This review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.40 of the Commission's rules (19 CFR 207.40).

Issued: August 12, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–20728 Filed 8–14–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1012 (Preliminary)]

Certain Frozen Fish Fillets From Vietnam

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Vietnam of certain frozen fish fillets, provided for in subheading 0304.20.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On June 28, 2002, a petition was filed with the Commission and Commerce by the Catfish Farmers of America and by individual U.S. catfish processors alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports certain frozen fish fillets from Vietnam. Accordingly, effective June 28, 2002, the Commission instituted antidumping duty investigation No. 731–TA–1012 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 8, 2002 (67 FR 45147). The conference was held in Washington, DC, on July 19, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 12, 2002. The views of the Commission are contained in USITC Publication 3533 (August 2002), entitled *Certain Frozen Fish Fillets from Vietnam: Investigation No. 731–TA–1012 (Preliminary).*

Issued: August 12, 2002

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–20750 Filed 8–14–02; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

Office Management Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Extension of currently approved collection, Department of Justice Federal Coal Lease Review Information.

The Department of Justice (DOJ), Justice Management Division (JMD) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** on June 10, 2002, Volume 67, Number 111, Pages 39743–39744 allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until [Insert]. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–5806. Written comments or suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technical collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Department of Justice Federal Coal Lease Review Information.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number(s): ATR–139; ATR–140. Antitrust Division, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: *Primary:* Business or other for profit. *Other:* None. *Abstract:* the Department of Justice evaluates the competitive impact of issuances, transfers and exchanges of Federal coal leases. These forms seek information regarding a prospective coal lessee's coal reserves subject to the Federal lease. The Department uses this information to determine whether the coal lease transfer is consistent with the antitrust laws.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20 responses per year at two hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 40 annual burden hours.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 12, 2002.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 02–20718 Filed 8–14–02; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Clean Air Act section 113(g), 42 U.S.C. 7413(g) and 28 CFR 50.7, notice is hereby given that a proposed Third Supplemental Consent Decree in *Concerned Citizens for Nuclear Safety, Inc.* v. *United States Department of Energy,* Case No. 94–1039 M (D.N.M.), was lodged with the United States District Court for the District of New Mexico on July 2, 2002. This proposed Third Supplemental Consent Decree resolves plaintiffs' claims for the costs of monitoring the audit conducted in 2002, pursuant to the Consent Decree entered by the Court on March 25, 1997.

The Department of Justice will accept written comments relating to this proposed Third Supplemental Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to Eileen McDonough, Environmental Defense Section, United States Department of Justice, P.O. Box 23986, Washington, DC 20026–3986 and reference DJ# 90–5–2–1–1749A.

The proposed Third Supplemental Consent Decree may be examined at the Clerk's Office, United States District Court for the District of New Mexico, South Federal Plaza, Santa Fe, New Mexico 87501.

Mary Edgar,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 02–20690 Filed 8–14–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with the Departmental Policy, 28 CFR 50.7, and section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9622(d)(2), notice is hereby given on August 7, 2002, a proposed Consent Decree in *United States* v. *Dutton-Lainson Company,* Civil Action No. 8:02CV366, was lodged with the United States District Court for the District of Nebraska.

This Consent Decree resolves claims of the United States' against Dutton-Lainson Company (''Dutton Lainson'') under Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), for recovery of response cost incurred and to be incurred by the United States Environmental Protection Agency (''EPA'') at the Well #3 Subsite (''Subsite''), one of seven subsites of the Hastings Ground Water Contamination Superfund Site located in Hastings, Nebraska. The Consent Decree requires Dutton-Lainson Company to implement EPA's selected remedial action for the Subsite, pay $333,119.76 in reimbursement of response costs, and pay EPA's future oversight costs at the Subsite.

The Department of Justice will receive written comments on the proposed Consent Decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Dutton-Lainson Company,* D.J. Ref. 90–11–2–1112/1.

The Consent Decree may be examined at the Office of the United States Attorney, District of Nebraska, 1620 Dodge Street, Suite 1400, Omaha, Nebraska, and at EPA Region VII, 901 North 5th Street, Kansas City, Kansas. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. When requesting a copy, please enclose a check to cover the twenty-five cents per page reproduction costs payable to the ''U.S. Treasury'' in the amount of $15.25 (for Decree without appendices) or $33.50 (for Decree with appendices), and please reference *United States* v. *Dutton-Lainson Company,* D.J. Ref. 90–11–2–1112/1.

Catherine R. McCabe,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–20691 Filed 8–14–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9622(d)(2), notice is hereby given that on August 6, 2002 a proposed Remedial Design/Remedial Action Consent Decree (''Decree'') in *United States* v. *Union Pacific Railroad Company*, Civil Action No. 8:02–CV–368 (D. Nebraska) was lodged with the United States District Court for the District of Nebraska.

The Decree resolves claims of the United States against Union Pacific Railroad Company (''Union Pacific'')

under Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), for injunctive relief and recovery of response costs incurred and to be incurred by the United States Environmental Protection Agency (''EPA'') at Operable Unit Number 5 (''OU5'') of the Cleburn Street Well Superfund Site located in Grand Island, Nebraska (''Site''). The Decree requires Union Pacific to implement EPA's selected remedial action for OU5 of the Site, pay $68,493.72 in reimbursement of past response costs, and pay EPA's future oversight costs at OU5.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Union Pacific Railroad Company*, Civil Action No. 8:02–CV–368 (D. Nebraska), D.J. Ref. 90–11–2–07597.

The Decree may be examined at the Office of the United States Attorney for the District of Nebraska, 1620 Dodge Street, Suite 1400, Omaha, Nebraska 68102–1506, and at U.S. EPA Region VII, 901 N. 5th Street, Kansas City, Kansas 66101. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $25.75 (25 cents per page reproduction cost) payable to the U.S. Treasury. In requesting a copy without the appendices, please enclose a check in the amount of $11.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert E. Maher,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–20689 Filed 8–14–02; 8:45 am]

BILLING CODE 4410–15–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services; Amended Notice: Proposed Collection, Comment Request, Recruiting and Educating Librarians for the 21st Century Application Form

AGENCY: Institute of Museum and Library Services.

ACTION: Notice.

SUMMARY: The Institute of Museum and Library Services, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Section 3508(2)(A)). This program helps to ensure that requested data can be provided in the desired format, the reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Institute of Museum and Library Services is soliciting comments on an application and guidelines for a grant opportunity focusing on ''Recruiting and Educating Librarians for the 21st Century.'' This Notice amends an earlier Notice published in 67 FR 51601.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before [insert date 45 days from time of publication] from the date of this publication.

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services Act, Public Law 104–208. IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their options and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs.

The President's FY 2003 Budget Request submitted to Congress in early February, 2002, proposes a $10 million initiative to educate and train librarians. Anticipating the loss of as many as 68% of the current cohort of professional librarians by 2019, the initiative will be designed to ''help recruit a new generation of librarians.

The President's proposed initiative recognizes the key role of libraries and librarians in maintaining the flow of information that is critical to support formal education; to guide intellectual, scientific, and commercial enterprise; to strengthen individual decisions; and to create the informed populace that lies at the core of democracy.''

Draft applications and guidelines are prepared contingent upon availability of funding.

II. Scope of Information Requested

IMLS is particularly interested in comments that helps the agency to (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: Institute of Museum and Library Services.

Title: Recruiting and Educating Librarians for the 21st Century.

OMB Number: N/A.

Agency Number: 3137.

Frequency: One time.

Affected Public: Libraries and schools of library information science.

Number of Respondents: 120.

Estimated Time Per Respondent: 40 hours.

Total Burden Hours: 4800.

Total Annualized capital/startup costs: 0.

FOR FURTHER INFORMATION CONTACT: Mamie Bittner, Director, Office of Public and Legislative Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. e-mail: *mbittner@imls.gov.* Fax: (202) 606–8591. e-mail or fax preferred.

Dated: August 9, 2002.

Nancy E. Weiss,

Federal Register Officer, National Foundation on the Arts and Humanities, Institute of Museum and Library Services.

[FR Doc. 02–20731 Filed 8–14–02; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 396, ''Certification of Medical Examination by Facility Licensee''.

2. *Current OMB approval number:* 3150–0024.

3. *How often the collection is required:* Upon application for an initial operator license, every six years for the renewal of operator or senior operator license, and upon notices of disability.

4. *Who is required or asked to report:* Facility licensees who are tasked with certifying the medical fitness of an applicant or licensee.

5. *The number of annual respondents:* 140.

6. *The number of hours needed annually to complete the requirement or request:* 751 (275 hours for reporting [.25 hours per response] and 476 hours for recordkeeping [3.4 hours per recordkeeper]).

7. *Abstract:* NRC Form 396 is used to transmit information to the NRC regarding the medical condition of applicants for initial operator licenses or renewal of operator licenses and for the maintenance of medical records for all licensed operators. The information is used to determine whether the physical condition and general health of applicants for operator licensees is such that the applicant would not be expected to cause operational errors and endanger public health and safety.

Submit, by October 15, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 7th day of August 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–20727 Filed 8–14–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Reactor Pressure Vessel Head and Vessel Head Penetration Nozzle Inspection Programs; Issue

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Bulletin (BL) 2002–02 to all holders of operating licenses for pressurized-water reactors (PWRs), except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel, and all holders of operating licenses for boiling-water reactors for information. It concerns the recent discoveries of cracked and leaking Alloy 600 vessel head penetration (VHP) nozzles at several PWRs and the reactor pressure vessel (RPV) head degradation at Davis-Besse Nuclear Power Station. These discoveries have raised concerns about the adequacy of current inspection programs that rely on visual examinations as the primary inspection method to ensure RPV head and VHP structural integrity. Specifically, the staff is concerned that the inspection methods and frequencies (*i.e.,* inspection intervals) of current inspection programs may not be sufficient. Based on experience and information currently available, it may be necessary for inspection programs that rely on visual examinations to be supplemented with additional measures (*e.g.,* volumetric and surface examinations) to demonstrate compliance with applicable regulations.

The issuance of this bulletin is the first step in a multi-step approach to address concerns about the adequacy of inspection requirements and programs for RPV heads and VHP nozzles. The other steps are: review the bulletin responses and determine what further regulatory actions are needed (*e.g.,* revision to 10 CFR 50.55a), review the Electric Power Research Institute's Material Reliability Program's (MRP's) proposed inspection program once an applicable technical basis is provided, encourage the revision of American Society of Mechanical Engineers (ASME) Code inspection requirements, and, if acceptable, incorporate the revised ASME Code requirements into NRC regulations.

The purpose of the bulletin is to (1) advise PWR addressees that visual examinations, as a primary inspection method for the RPV head and VHP nozzles, may need to be supplemented with additional measures (*e.g.,* volumetric and surface examinations) to demonstrate compliance with applicable regulations, (2) advise PWR addressees that inspection methods and frequencies to demonstrate compliance with applicable regulations should be demonstrated to be reliable and effective, (3) request information from all PWR addressees concerning their RPV head and VHP nozzle inspection programs to ensure compliance with applicable regulatory requirements, and (4) require all addressees to provide written responses to the bulletin related to their inspection program plans.

DATES: The bulletin was issued on August 9, 2002.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Allen L. Hiser, at 301–415–1034, Timothy K. Steingass, at 301–415–3312, Michael L. Marshall, at 301–415–2734, or Steven D. Bloom, at 301–415–1313.

SUPPLEMENTARY INFORMATION: Bulletin 2002–02 may be examined and/or copied for a fee at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and is accessible electronically from the Agencywide Documents Access and

Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* The ADAMS Accession No. for the bulletin is ML022200494.

If you do not have access to ADAMS or if there are problems in accessing documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 301–415–4737 or 1–800–397–4209, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 9th day of August 2002.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–20729 Filed 8–14–02; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in August 2002. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in September 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the ''required interest rate'') in determining a single-employer plan's variable-rate premium. The required interest rate is the ''applicable percentage'' (currently 100 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year''). (Although the Treasury Department has ceased issuing 30-year securities, the Internal Revenue Service announces a surrogate yield figure each month—based on the 30-year Treasury bond maturing in February 2031—which the PBGC uses to determine the required interest rate.)

The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in August 2002 is 5.39 percent.

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between September 2001 and August 2002.

For premium payment years beginning in:	The required interest rate is:
September 2001	4.66
October 2001	4.66
November 2001	4.52
December 2001	4.35
January 2002	5.48
February 2002	5.45
March 2002	5.40
April 2002	5.71
May 2002	5.68
June 2002	5.65
July 2002	5.52
August 2002	5.39

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in September 2002 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 8th day of August, 2002.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 02–20703 Filed 8–14–02; 8:45 am]

BILLING CODE 7708–01–P

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

Summary: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Evidence of Martial Relationship, Living with Requirements; OMB 3220–0021.

To support an application for a spouse or widow(er)'s annuity under Sections 2(c) or 2(d) of the Railroad Retirement Act, an applicant must submit proof of a valid marriage to a railroad employee. In some cases, the existence of a marital relationship is not formalized by a civil or religious ceremony. In other cases, questions may arise about the legal termination of a prior marriage of an employee, spouse, or widow(er). In these instances, the RRB must secure additional information to resolve questionable marital relationships. The circumstances requiring an applicant to submit documentary evidence of marriage are prescribed in 20 CFR 219.30.

In the absence of documentary evidence to support the existence of a valid marriage between a spouse or widow(er) annuity applicant and a railroad employee, the RRB needs to obtain information to determine if a

valid marriage existed. The RRB utilizes Forms G–124, Statement of Marital Relationship; G–124a, Statement Regarding Marriage; G–237, Statement Regarding Marital Status; G–238, Statement of Residence; and G–238a, Statement Regarding Divorce or Annulment to secure the needed information. One response is requested of each respondent. Completion is required to obtain benefits. The RRB proposes minor non-burden impacting cosmetic, editorial and formatting changes to all the forms in the collection.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form #(s)	Annual responses	Time (Min)	Burden (Hrs)
G–124 (In person)	125	15	31
G–124 (By mail)	75	20	25
G–124a	300	10	50
G–237 (In person)	75	15	19
G–237 (By mail)	75	20	25
G–238 (In person)	150	3	8
G–238 (By mail)	150	5	13
G–238a	150	10	25
Total	1,100	.....	196

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–20676 Filed 8–14–02; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 15c1–5, SEC File No. 270–422, OMB Control No. 3235–0471

Rule 15c1–6, SEC File No. 270–423, OMB Control No. 3235–0472

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for approval of extension on the following:

Rule 15c1–5 ((17 CFR 240.15c1–5) states that any broker-dealer controlled by, controlling, or under common control with the issuer of a security that the broker-dealer is trying to sell to or buy from a customer must give the customer written notification disclosing the control relationship at or before completion of the transaction. The Commission estimates that 360 respondents collect information annually under Rule 15c1–5 and that approximately 3,600 hours would be required annually for these collections.

There is no retention period requirement under Rule 15c1–5. This Rule does not involve the collection of confidential information.

Rule 15c1–6 (17 CFR 240.15c1–6) states that any broker-dealer trying to sell to or buy from a customer a security in a primary or secondary distribution in which the broker-dealer is participating or is otherwise financially interested must give the customer written notification of the broker-dealer's participation or interest at or before completion of the transaction. The Commission estimates that 725 respondents collect information annually under Rule 15c1–6 and that approximately 7,250 hours would be required annually for these collections.

There is no retention period requirement under Rule 15c1–6. This Rule does not involve the collection of confidential information.

Please note that an agency may not conduct or sponsor, and a person is not required to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 10202, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 9, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20768 Filed 8–14–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration on the American Stock Exchange LLC (Northeast Pennsylvania Financial Corp., Common Stock, $.01 par value) File No. 1–13793

August 9, 2002.

Northeast Pennsylvania Financial Corp., a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value (''Security''), from listing and

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the state of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the Amex and from registration under section 12(b) of the Act,[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

The Board of Directors (''Board'') of the Issuer unanimously approved a resolution on April 30, 2002 to withdraw the Issuer's Security from listing on the Amex and trade its Security on the Nasdaq National Market. In making the decision to withdraw its Security from the Amex, the Board states that trading on the Nasdaq National Market will provide increased exposure among its investors and improve the liquidity of its Security. The Board also believes it is in the best interest of the Company's stockholders.

Any interested person may, on or before August 30, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–20770 Filed 8–14–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of August 19, 2002:

Closed Meetings will be held on Tuesday, August 20, 2002 at 10 a.m., and Thursday, August 22, 2002 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (8), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), (8), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting scheduled for Tuesday, August 20, 2002, will be:

Formal orders of investigation;

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

The subject matter of the Closed Meeting scheduled for Thursday, August 22, 2002, will be:

Formal orders of investigation;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Regulatory matter regarding a financial institution; and Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: August 13, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20934 Filed 8–13–02; 4:00 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46331; File No. SR–Amex–2002–67]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by American Stock Exchange LLC Relating to Fees for Transactions in Nasdaq Securities Traded on an Unlisted Basis

August 9, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to suspend Exchange transaction charges in Nasdaq securities admitted to dealings on an unlisted basis for trades effected on the Amex through September 30, 2002.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and the basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is suspending all transaction charges for Amex trades in Nasdaq listed securities admitted to dealings on an unlisted basis through September 30, 2002. The Exchange believes that a suspension of transaction charges at the inception of the Exchange's program to trade Nasdaq

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

securities is appropriate to enhance the competitiveness of Amex executions.[3]

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act[4] in general and furthers the objectives of Section 6(b)[5] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its member, issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed fee change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act[6] and subparagraph (f)(2) of Rule 19b–4[7] thereunder, because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing date, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2002–67 and should be submitted by September 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20769 Filed 8–14–02; 8:45 am]

BILLING CODE 8010–01–P

[3] Amex issued a circular (02–0610 dated August 6, 2002) stating that these fees will be waived through September 30, 2002.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46321; File No. SR–CHX–2001–32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the Chicago Stock Exchange, Inc., To Amend CHX Article XX, Rule 37 Governing Automatic Execution of Market and Marketable Limit Orders

August 7, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 26, 2001, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On June 19, 2002, the CHX amended the proposal.[3] The CHX again amended the proposed rule change on July 26, 2002.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CHX Article XX, Rule 37, which governs, among other things, automatic execution of market and marketable limit orders. The text of the proposed rule change is available at the Commission and at the CHX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend CHX Article XX, Rule 37, which governs, among other things, automatic execution of market and marketable limit orders. The proposed rule change is intended to provide CHX order-sending firms with greater flexibility relating to automatic execution of orders by CHX specialists. The principal components of the proposed rule change are: (a) In the case of Dual Trading System issues, commonly referred to as listed issues, permitting immediate execution (or execution in 15 seconds or less) of orders if there is no expression of market interest by a person physically present at the specialist's post; and (b) refinement of existing CHX algorithms relating to automatic execution of partial orders and price improvement of such orders.

Addition of Variable AutoEx to MAX Trading System for Dual Trading System Issues. The CHX proposes to amend CHX Article XX, Rule 37(b)(6), which governs automatic execution of orders for Dual Trading System issues. The CHX filed the proposed rule change to respond to the needs of order-sending firms that have guaranteed their

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* June 18, 2002 letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, and attachments (''Amendment No. 1''). Amendment No. 1 completely replaced and superseded the original filing.

[4] *See* July 25, 2002 letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, and attachments (''Amendment No. 2''). Amendment No. 2 completely replaced and superseded Amendment No. 1. Thus, the CHX is soliciting comment on Amendment No. 2.

customers that customer orders will be filled within 10 seconds or less. These customers represent a significant portion of the orders that are routed to the CHX, and their respective business models dictate such execution time guarantees.

Under the existing Rule, an order for a Dual Trading System issue generally is not eligible for immediate automatic execution given the requirement that 15 seconds elapse before execution, in order to permit exposure of the order to the market. Under the proposed rule, specialists trading Dual Trading System issues would be permitted to reduce this 15-second period to zero seconds (*i.e.,* permit an immediate execution), so long as there was no person physically present at the specialist's post expressing market interest.

It is anticipated that the proposed rule change would satisfy the concerns of order-sending firms that require immediate executions, while still preserving the fundamental protections of an auction market environment.

Refinement of Automatic Execution Sequences and Price Improvement Algorithms for Partial Orders. Following implementation of a proposed rule change previously approved by the Commission relating to automatic execution of partial orders and price improvement of portions of orders,[5] Exchange staff has worked extensively with specialist firm management and order-sending firm representatives to further refine applicable automatic execution sequences and price improvement algorithms.

Simply stated, the proposed refinements would continue to provide for automatic execution of partial orders if an order-sending firm elects partial executions, with potentially varying price improvement consequences based on the size of the order. An order-sending firm that declines partial executions would remain eligible for price improvement if its order is automatically executed, and the specialist would be precluded from providing multiple price improvement treatments for portions of the order.

Finally, the proposed rule change corrects previous typographical errors and notations, and deletes rule provisions that have been rendered obsolete by subsequent rule changes and interpretations.

2. Statutory Basis

The Exchange believes that the proposed rule is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and with the requirements of section 6(b).[6] In particular, the Exchange believes the proposed rule is consistent with section 6(b)(5) of the Act[7] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CHX consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2001–32 and should be submitted by August 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20683 Filed 8–14–02; 8:45 am]

BILLING CODE 8010–01–P

[5] *See* Securities Exchange Act Release No. 44778 (September 7, 2001), 66 FR 48075 (September 17, 2001)(SR–CHX–2001–11).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46324; File No. SR–MSRB–2002–08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Electronic Mail Contacts, Operative on September 8, 2002

August 8, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 7, 2002, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–2002–08). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing herewith a proposed rule change relating to a technical amendment to its Rule G–40 and Form G–40, on electronic mail contacts. The proposed rule change will become operative on September 8, 2002. Below is the text of the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change. Proposed new language is italicized; proposed deletions are in brackets.

Rule G–40. Electronic Mail Contacts.

(a)*(i)* Each broker, dealer or municipal securities dealer shall appoint a[n] *Primary* Electronic Mail Contact to serve as the official contact person for purposes of electronic mail communication between the broker, dealer or municipal securities dealer and the MSRB. Each *Primary* Electronic Mail Contact shall be a registered municipal securities principal of the broker, dealer or municipal securities dealer.

(ii) Each broker, dealer or municipal securities dealer may appoint an Optional Electronic Mail Contact for purposes of electronic mail communication between the broker, dealer or municipal securities dealer and the MSRB.

(b)(i) Upon completion of its Rule A–12 submissions and assignment of an MSRB Registration Number, each broker, dealer or municipal securities dealer shall submit to the MSRB by mail a completed Form G–40 setting forth, in the prescribed format, the following information:

(A) The name of the broker, dealer or municipal securities dealer, and the date.

(B) The MSRB Registration Number of the broker, dealer or municipal securities dealer.

(C) The name of the *Primary* Electronic Mail Contact, and his/her electronic mail address, telephone number and Individual Central Registration Depository (CRD) Number.

(D) *The name of the Optional Electronic Mail Contact, if any, and his/her electronic mail address and telephone number.*

(*E*) The name, title, signature and telephone number of the person who prepared the form.

(ii) A broker, dealer or municipal securities dealer may change the name of its Electronic Mail Contact*s* or other information previously provided by electronically submitting to the MSRB an amended Form G–40.

(c) Each broker, dealer or municipal securities dealer shall update information on its Electronic Mail Contacts periodically as requested and prescribed by the MSRB and shall submit such information electronically to the MSRB.

BILLING CODE 8010–01–P

Form G-40
ELECTRONIC MAIL CONTACT*S*

MSRB Registration Number
_____

Name of Dealer: _____

Date: _____

The dealer named above designates (name) _____ as its Primary Electronic Mail Contact for purposes of electronic communications with the MSRB. This Primary Contact person is a registered municipal securities principal with the dealer.

E-Mail Address of Primary Contact: _____
Phone Number of Primary Contact: _____
Individual CRD Number of Primary Contact (NASD member firms only): _____

(Optional): The dealer named above designates (name) _____ as its [second] Optional Electronic Mail Contact. [This contact person is a registered municipal securities principal with the dealer.]
E-mail Address of [Second Designee] Optional Contact: _____
Phone Number of [Second Designee] Optional Contact: _____
[Individual CRD Number of Second Designee (NASD member firms only): _____]

Name and title of person preparing this Form: _____
Signature: _____
Telephone number: _____

NEW FORMS MUST BE MAILED TO:

MSRB
1900 Duke Street, Suite 600
Alexandria, VA 22314

[TO SUBMIT AMENDED FORMS &] UPDATES *TO THE FORM SHALL BE SUBMITTED* ELECTRONICALLY *VIA THE G-40 LOG-IN ON THE MSRB'S WEB SITE (www.msrb.org)* [TO MSRB, PLEASE CALL (703) 797-6600].

* * * * *

BILLING CODE 8010–01–C

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) On June 6, 2002, the Commission approved new MSRB Rule G–40, on electronic mail (''e-mail'') contacts, and new Form G–40, as well as related amendments to Rule G–8, on books and records, and Rule G–9, on preservation of records.[3] The new Rule requires each broker, dealer and municipal securities dealer (collectively referred to as ''dealers'') to use new Form G–40 to appoint an e-mail contact to serve as the official contact person for purposes of electronic communication between the dealer and the MSRB. This E-mail contact must be a registered municipal securities principal with the dealer. Dealers have the option of appointing a second contact who, under the rule as originally adopted, also must be a municipal securities principal with the dealer.

The MSRB recently sent letters to its current list of dealers requesting that they complete new Form G–40. In response to this mailing, the MSRB received numerous phone calls from dealers that have only one municipal securities principal and wish to appoint a second (optional) e-mail contact who is not a principal. Accordingly, the MSRB has determined to amend Rule G–40 and Form G–40 to accommodate these dealers by eliminating the requirement that the second contact must be a municipal securities principal. The amendment also distinguishes between the two e-mail contacts by referring to the official contact person as the ''Primary Contact'' and the secondary person as the ''Optional Contact.'' [4]

(b) The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(I) of the Act, which authorizes the MSRB to adopt rules that provide for the operation and administration of the MSRB. The MSRB also believes that the proposed rule change will facilitate effective electronic communications between dealers and the MSRB.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; (iii) was provided to the SEC for its review at least five business days prior to the filing date; and (iv) does not become operative until September 8, 2002, which is more than thirty (30) days after the date of its filing, the MSRB has submitted this proposed rule change to become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[5] In particular, the MSRB believes the proposed rule change qualifies as a ''non-controversial filing'' in that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. At any time within 60 days of the filing of this proposed rule change, the Commission may summarily abrogate this rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's offices. All submissions should refer to File No. SR–MSRB–2002–08 and should be submitted by September 5, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated Authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20766 Filed 8–14–02; 8:45 am]

BILLING CODE 8010–01–P

[3] Release No. 34–46043 (June 6, 2002) 67 FR 40762. The effective date of the Rule is September 4, 2002. The MSRB requested a 90-day delayed effective date in order to give current dealers the time necessary to comply with the new requirements.

[4] Paragraph (a) of Rule G–40 requires that each dealer appoint an ''Electronic Mail Contact'' to serve as its official contact person for purposes of communicating with the MSRB, and that such person be a registered municipal securities principal of the dealer. Paragraph (b) requires that each dealer, upon completion of its Rule A–12 submissions and assignment of an MSRB Registration Number, submit by mail to the MSRB a completed Form G–40 setting forth the dealer's name, date, MSRB Registration Number, name of its E-mail contact and his/her e-mail address, telephone number and Individual Central Registration Depository (CRD) Number, and the name, title, signature and telephone number of the person who prepared the Form. Paragraph (b) also provides that the dealer may change its E-mail contact or other information previously submitted by amending its Form G–40 electronically. Paragraph (c) requires each dealer to update information on its E-mail contacts as periodically requested and prescribed by the MSRB and to submit such information electronically to the MSRB.

[5] 15 U.S.C. 78s(b)(3)(A); 17 CFR 240.19b–4(f)(6).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46323; File No. SR–Phlx–2002–39]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Provide Automatic Executions for Eligible Orders at the Exchange's Disseminated Size, Subject to a Minimum and Maximum Eligible Size Range

August 8, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 3, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange Rule 1080, Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)[3] to provide automatic executions for eligible orders at the Exchange's disseminated size, subject to a minimum and maximum eligible size range to be determined by the specialist, on an issue-by-issue basis. The Exchange also proposes to delete references to public customer orders from the description of AUTO–X set forth in Exchange Rule 1080(c) in order to reflect that, in certain issues, orders for the proprietary account(s) of broker-dealers may be eligible for automatic execution via AUTO–X.

The text of the proposed rule change is set forth below. Deletions are in brackets; additions are in italics.

Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)

Rule 1080. (a)–(b) No change.

(c) AUTO–X is a feature of AUTOM that automatically executes eligible [public customer] market and marketable limit orders up to the number of contracts permitted by the Exchange for certain strike prices and expiration months in equity options and index options, unless the Options Committee determines otherwise. AUTO–X automatically executes eligible orders using the Exchange disseminated quotation (except if executed pursuant to the NBBO Feature in sub-paragraph (i) below) and then automatically routes execution reports to the originating member organization. AUTOM orders not eligible for AUTO–X are executed manually in accordance with Exchange rules. Manual execution may also occur when AUTO–X is not engaged, such as pursuant to sub-paragraph (iv) below. An order may also be executed partially by AUTO–X and partially manually. The Options Committee may for any period restrict the use of AUTO–X on the Exchange in any option or series provided that the effectiveness of any such restriction shall be conditioned upon its having been approved by the Securities and Exchange Commission pursuant to Section 19(b) of the Securities Exchange Act of 1934 and the rules and regulations thereunder. Any such restriction on the use of AUTO–X approved by the Options Committee will be clearly communicated to Exchange membership and AUTOM users through an electronic message sent via AUTOM and through an Exchange information circular. Such restriction would not take effect until after such communication has been made. [Currently, orders up to 250 contracts, subject to the approval of the Options Committee, are eligible for AUTO–X.]

Currently, the Exchange's maximum allowable AUTO–X guarantee is 250 contracts. For each option, there shall be a minimum guaranteed AUTO–X size and a maximum guaranteed AUTO–X size. Such minimum and maximum sizes may be for a different number of contracts for customer orders than for broker-dealer orders, as determined by the specialist and subject to the approval of the Options Committee.

The Exchange shall provide automatic executions for eligible orders up to the Exchange's disseminated size as defined in Exchange Rule 1082, subject to a minimum guaranteed AUTO–X size and a maximum guaranteed AUTO–X size (up to a size of 250 contracts).

- *If the Exchange's disseminated size is greater than the minimum guaranteed AUTO–X size, and less than the maximum guaranteed AUTO–X size, inbound eligible orders shall be automatically executed up to Exchange's disseminated size. Remaining contracts shall be executed manually by the specialist or placed on the limit order book.*
- *If the Exchange's disseminated size is less than the minimum guaranteed AUTO–X size for that option, inbound eligible orders shall be automatically executed up to such minimum guaranteed AUTO–X size. Remaining contracts shall be executed manually by the specialist or placed on the limit order book.*
- *If the Exchange's disseminated size is greater than the maximum guaranteed AUTO–X size, inbound eligible orders shall be automatically executed up to such maximum guaranteed AUTO–X size. Remaining contracts shall be executed manually by the specialist.*

The minimum and maximum guaranteed AUTO–X size applicable to each option shall be posted on the Exchange's web site.

The Options Committee may, in its discretion, increase the size of orders in one or more classes of multiply-traded equity options eligible for AUTO–X to the extent necessary to match the size of orders in the same options eligible for entry into the automated execution system of any other options exchange, provided that the effectiveness of any such increase shall be conditioned upon its having been filed with the Securities and Exchange Commission pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934.

(i)–(v) No change.

(d)–(j) No change.

Commentary: No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or automatically if the order is eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. An order may also be executed partially by AUTO–X and partially manually when the size of an eligible inbound market or marketable limit order exceeds the guaranteed AUTO–X size.

and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to codify a change in the Exchange's AUTOM and Auto-Quote [4] system that would allow the Exchange to automatically execute eligible orders [5] at the Exchange's disseminated size, as defined in proposed Exchange Rule 1082(a)(ii).[6]

Currently, the Exchange automatically executes eligible orders at a size equal to the AUTO–X guarantee for a given option, regardless of the Exchange's disseminated size. The proposed rule change would allow the Exchange to provide automatic executions for eligible orders in a size equal to the Exchange's disseminated size, subject to a minimum guaranteed AUTO–X size and a maximum guaranteed AUTO–X size (which cannot exceed the Exchange's floor-wide allowable maximum guaranteed AUTO–X size for an option, which is currently 250 contracts), to be determined by the specialist and subject to the approval of the Options Committee.[7]

The proposed amended rule would include the following provisions:

1. If the Exchange's disseminated size is greater than the minimum guaranteed AUTO–X size, and less than the maximum guaranteed AUTO–X size, inbound eligible orders shall be automatically executed up to the Exchange's disseminated size. Remaining contracts shall be executed manually by the specialist or placed on the limit order book.

Example 1:
Minimum Guaranteed AUTO-X Size = 10
Maximum Guaranteed AUTO-X Size = 50
Disseminated Size = 35
Inbound Order Size = 90

In this example, the Exchange would automatically execute 35 contracts (the disseminated size). The specialist would be responsible to execute the remaining 55 contracts manually or, in the case of a limit order, to place the remaining 55 contracts on the limit order book, if the automatic execution has exhausted the size at that price.

2. If the Exchange's disseminated size is less than the minimum guaranteed AUTO–X size for that option, inbound eligible orders delivered via AUTOM shall be automatically executed up to such minimum guaranteed AUTO–X size. Remaining contracts shall be executed manually by the specialist or placed on the limit order book.

Example 2:
Minimum Guaranteed AUTO–X Size = 10
Maximum Guaranteed AUTO–X Size = 50
Disseminated Size = 6
Inbound Order Size = 20

In this example, the Exchange would automatically execute 10 contracts (the minimum guaranteed AUTO–X size) even though its disseminated size is for 6 contracts. The specialist would be responsible to execute the remaining 10 contracts manually at that price or the next best price or, in the case of a limit order, to place the remaining 10 contracts on the limit order book, if the automatic execution has exhausted the size at that price.

3. If the Exchange's disseminated size is greater than the maximum guaranteed AUTO–X size, inbound eligible orders shall be automatically executed up to such maximum guaranteed AUTO–X size. Remaining contracts shall be executed manually by the specialist at the disseminated price.

Example 3:
Minimum Guaranteed AUTO–X Size = 10
Maximum Guaranteed AUTO–X Size = 50
Disseminated Size = 100
Inbound Order Size = 90

In this example, the Exchange would automatically execute 50 contracts (the maximum guaranteed AUTO–X size). The specialist would be responsible to execute the remaining 40 contracts manually at that same price because the Exchange's rules concerning firm quotations [8] require the Exchange to be firm at that price up to the disseminated size of 100 contracts.

The proposed rule would provide that the minimum guaranteed AUTO–X size and maximum guaranteed AUTO–X size for a given option is to be determined on an issue-by-issue basis by the specialist and subject to the approval of the Options Committee.[9] In determining whether to approve the minimum and maximum guaranteed AUTO–X size for each option, the Options Committee may consider, without limitation, the number of series and open interest in the option; the volatility of the option; the liquidity of the option; historical and projected volume of trading in the option; and the projected share of total trading in the option that is likely to occur at the Exchange, as well as other relevant factors.

The proposed rule reflects recent technological advancements and changes to the Exchange's Auto-Quote system designed to enable the Exchange to eventually disseminate options quotations with actual size. The instant proposal is intended to codify the interaction of the new Auto-Quote system with AUTO–X, specifically addressing the capability of AUTO–X to provide automatic executions for eligible orders at the Exchange's actual disseminated size. The Exchange believes that providing automatic executions at the Exchange's disseminated size should enhance the ability of investors to ascertain the true number of contracts available for automatic execution of eligible orders, thus contributing to transparency in the markets.

The Exchange also proposes to delete references to public customer orders from the description of AUTO–X set forth in Exchange Rule 1080(c) in order to reflect that, in certain issues, orders for the proprietary account(s) of broker-dealers may be eligible for automatic execution via AUTO–X.[10] Minimum and maximum sizes could be for a different number of contracts for broker-dealer orders than for customer orders.[11]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act [12] in general, and furthers the objectives of Section 6(b) [13] in particular, in that it is designed to perfect the mechanisms of a free and

[4] Auto-Quote is the Exchange's electronic options pricing system, which enables specialists to automatically monitor and instantly update quotations. *See* Exchange Rule 1080, Commentary .01(a).

[5] AUTO–X eligible order are orders that do not otherwise bypass AUTO–X for manual handling by the specialist in accordance with Exchange Rule 1080(c)(iv).

[6] *See* SR–Phlx–2002–15.

[7] The Exchange notes that the Options Committee may, in its discretion, increase the size of orders in one or more classes of multiply-traded equity options eligible for AUTO–X to the extent necessary to match the size of orders in the same options eligible for entry into the automated execution system of any other options exchange, provided that the effectiveness of any such increase shall be conditioned upon its having been filed with the Commission pursuant to section 19(b)(3)(A) of the Act. *See* Exchange Rule 1080(c).

[8] *See* Exchange Rule 1082, Firm Quotations.

[9] The Exchange has stated that the maximum guaranteed AUTO–X size for a given option generally would not be changed intra-day. Telephone call between Sonia Patton, Division of Market Regulation (''Division''), Commission, and Richard Rudolph, Director and Counsel, Phlx (August 5, 2002).

[10] *See* Securities Exchange Act Release No. 45758 (April 15, 2002), 67 FR 19610 (April 22, 2002) (SR–Phlx–2001–40).

[11] Currently, the Exchange is operating an AUTO–X pilot program that disengages AUTO–X in an option for 30 seconds when the number of contracts executed automatically for the option meets the AUTO–X guarantee within a 15 second time frame. *See* Securities Exchange Act Release No. 45862 (May 1, 2002), 67 FR 30990 (May 8, 2002). The Exchange has stated that this pilot will continue to operate and that if there is a different size for customers and broker-dealers, the larger of the two will constitute the AUTO–X guarantee for purposes of the pilot. Telephone call between Sonia Patton, Division, Commission, and Richard Rudolph, Director and Counsel, Phlx (August 5, 2002).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade, by establishing the capability of the Exchange to provide automatic executions for eligible orders at the disseminated size, subject to minimum and maximum guaranteed AUTO–X sizes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2002–39 and should be submitted by September 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20682 Filed 8–14–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46325; File No. SR–Phlx–2002–15]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change, and Amendment Nos. 1, 2, 3, 4, and 5 Thereto by the Philadelphia Stock Exchange, Inc. To Redefine the Exchange's Disseminated Size for Options Quotations

August 8, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 5, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On April 15, 2002, the Phlx submitted Amendment No. 1 to the proposed rule change.[3] On June 12, 2002, the Phlx submitted Amendment No. 2 to the proposed rule change.[4] On June 17, 2002, the Phlx submitted Amendment No. 3 to the proposed rule change.[5] On July 31, 2002, the Phlx submitted Amendment No. 4 to the proposed rule change.[6] On August 5, 2002, the Phlx submitted Amendment No. 5 to the proposed rule change.[7] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated April 12, 2002 (''Amendment No. 1''). In Amendment No. 1, the Phlx: (1) Amended Phlx Rule 1082, Firm Quotations, and Option Floor Procedure Advice (''Advice'') F–7, Bids and Offers, to specify that the term ''disseminated size'' means either (a) the AUTO–X guarantee for the quoted option, except that the disseminated size of bids and offers on the book shall be ten contracts, or (b) the sum of certain limit orders on the limit order book, subject to specific qualifying sizes for inclusion in the Exchange's disseminated size; (2) made a technical clarification concerning a previously filed Phlx proposal to disseminate options quotations with size; (3) added a paragraph specifying that specialists may supply their own bids and offers, including the size of such bids and offers, through proprietary systems called Specialized Quote Feeds (''SQFs''), and explained that the disseminated size of any such bid or offer shall be firm; and (4) explained that during the roll out period of the new quotes with size system, the Exchange will have two systems operating, the new Auto-Quote system and the current Auto-Quote system. Once the new Auto-Quote system roll out is complete, the Phlx committed to deleting references to the current Auto-Quote system.

[4] *See* letter and accompanying Form 19b–4 from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated June 11, 2002 (''Amendment No. 2''). In Amendment No. 2, the Phlx amended the rule text to reflect that, once the Exchange's new Auto-Quote system is deployed, the Exchange's disseminated size would be equal to the sum of limit orders at the Exchange's disseminated price, or, if there are no limit orders at the Exchange's disseminated price, the AUTO–X guarantee for the particular option, but such size may be increased to reflect the specialist's and trading crowd's sizes. The Exchange represented that during the time that the new Auto-Quote system is deployed, some options series will continue to reflect the current disseminated size of either the AUTO–X guarantee for that option or, respecting limit orders on the book at the Exchange's disseminated price, a size of 10 contracts. Amendment No. 2 also included a proposal to increase the minimum AUTOM order delivery size for broker-dealer orders from one contract to ten contracts. Finally, the Phlx represented that the proposed rule change would not change the functionality of AUTO–X.

[5] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated June 14, 2002 (''Amendment No. 3''). In Amendment No. 3, the Phlx: (1) deleted the word ''customer'' from the relevant amended portion of Advice F–7(a); (2) deleted the phrase ''the AUTO–X guarantee for the particular option, but may be for a greater size, reflecting'' from Advice F–7(b)(2); (3) clarified that in the another order cited in the proposed rule change the Commission approved the delivery of off-floor broker-dealer orders via AUTOM, and the availability of automatic execution for certain off-floor broker-dealer orders via AUTO–X, on a six-month pilot basis; (4) clarified that the Exchange's disseminated size would be at least the sum of limit orders, and the specialist and crowd would be able to determine to disseminate a size greater than the sum of limit orders, and made conforming changes to the rule text; and (5) represented that, with respect to booked limit orders at the Exchange's best/bid offer, the new Auto-Quote system will decrement the disseminated size automatically, and that the specialist would be responsible to manually decrement the size of limit orders represented in the crowd at the Exchange's best/bid offer.

[6] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Kelly Riley, Senior Special Counsel, Division, Commission, dated July 29, 2002 (''Amendment No. 4''). In Amendment No. 4, the Phlx: (1) Amended Phlx Rule 1082(a)(ii)(A) and Advice F–7(a) to reflect that the current Auto-Quote technology would be scheduled to be phased-out by September 2002; and (2) deleted its previous proposal to amend Commentary .05 to Phlx 1080 regarding the minimum size of off-floor broker-dealer orders delivered via AUTOM.

[7] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Kelly Riley, Senior Special Counsel, Division, Commission, dated August 2, 2002 (''Amendment No. 5''). In Amendment No. 5, the Phlx made technical amendments to the text of the proposal in response to comments received from Commission staff.

granting accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its Rule 1082, Firm Quotations, and Advice F–7, Bids and Offers, to re-define the Exchange's disseminated size of option quotations.

Currently, the term ''disseminated size'' is defined in Phlx Rule 1082 and Advice F–7 to mean the AUTO–X guarantee for the quoted option, except that the disseminated size of limit orders on the book is ten contracts, regardless of the actual size of such a limit order. The proposal provides that, during the deployment of the technology necessary for the new disseminated size program, the size of some quotations in options series on the Exchange will continue to be disseminated with the current disseminated size definition, and the size of some options quotations will be disseminated with the newly defined disseminated size. The options that will have the size of their quotations determined using the current Phlx definition will continue to use the Auto-Quote technology that was operating on the Exchange as of May 2002 (''current Auto-Quote''). The Phlx anticipates that the current Auto-Quote technology will be phased-out by September 2002.

Under the proposal, respecting options subject to the Auto-Quote technology implemented after the effective date of this provision (''new Auto-Quote''), the new ''disseminated size'' would be at least the sum of limit orders; however, the proposal would permit the specialist and crowd to disseminate a size greater than the sum of the limit orders.

The text of the proposed rule change, as amended, appears below. New text is in italics; deletions are in brackets.

* * * * *

Firm Quotations

Rule 1082(a) Definitions

(i) The term ''disseminated price'' shall mean the bid (or offer) price for an options series that is made available by the Exchange and displayed by a quotation vendor on a terminal or other display device.

(ii) The term ''disseminated size'' shall mean, with respect to the disseminated price for any quoted options series[,]:

(A) Respecting options subject to the Auto-Quote technology operating as of May, 2002 (''current Auto-Quote'') and scheduled to be phased-out by September 2002: the AUTO–X guarantee for the quoted option, except that the disseminated size of [bids and offers of] limit orders on the book shall be ten (10) contracts[.]*; or*

(B) Respecting options subject to the Auto-Quote technology implemented after the effective date of this provision (''new Auto-Quote'') and options subject to a proprietary quoting system provided for in Rule 1080.02 (''Specialized Quote Feed''), at least the sum of limit orders. The specialist and crowd may determine to disseminate a size greater than the sum of limit orders.

(iii)–(iv) No change.

(b)–(e) No change.

F–7 Bids and Offers

All bid and offer prices shall be general ones and shall not be specified for acceptance by particular members.

In the absence of a stated size to any bid or offer voiced or displayed on the Options Floor, the person responsible for such bid and offer is deemed to be quoting for one contract, except in those instances where predetermined volume guarantees are provided for the facilitation of specific account types. Floor traders may, however, be required to trade more than one contract in connection with provisions under Advice A–11.

The size of any disseminated bid or offer by the Exchange shall be*, with respect to the disseminated price for any quoted options series,* equal to*:*

(a) Respecting options subject to the Auto-Quote technology operating as of May, 2002 (''current Auto-Quote'') and scheduled to be phased-out by September 2002: the AUTO–X guarantee for the quoted option and shall be firm, except that the disseminated size of [bids and offers of] limit orders on the book shall be ten (10) contracts and shall be firm, regardless of the actual size of such orders[.]*; or*

(b) respecting options subject to the Auto-Quote technology implemented after the effective date of this provision (''new Auto-Quote'') and options subject to a proprietary quoting system provided for in Rule 1080.02 (''Specialized Quote Feed'') at least the sum of limit orders. The specialist and crowd may determine to disseminate a size greater than the sum of limit orders.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to add a new definition of ''disseminated size'' with respect to options subject to the new Auto-Quote technology and options subject to an SQF. For these options, the Phlx proposes to define ''disseminated size'' as, with respect to the disseminated price, at least the sum of the size(s) of limit orders. The proposal would also allow the specialist and crowd to determine to disseminate a size greater than the sum of the limit orders. Under this proposal, if there are no limit orders at the disseminated price, the specialist has the ability to establish a specific size for each series quoted by the new Auto-Quote or SQF.[8]

This differs from the current Exchange disseminated quote size definition, which is the AUTO–X guarantee for quotes generated by the current Auto-Quote or SQF, or ten contracts for quotes that represent booked limit orders, regardless of the actual size of such booked limit orders. The Phlx proposes to continue to use the current ''disseminated size'' definition for options that are subject to the current Auto-Quote technology.

The Exchange has represented that a quote disseminated by the Exchange's new Auto-Quote (or by SQF) is deemed to be the quote of the specialist and all Registered Options Traders (''ROTs'') in the crowd unless the ROT has vocalized a different quote in a clear and audible manner with sufficient time for the specialist to take action to update the quote, if necessary.[9] Thus, a specialist disseminating a quote through the new Auto-Quote or SQF could not cause an ROT to be firm for a size greater than a size for which such ROT is willing to be firm. In situations in which the Auto-

[8] Phlx Rule 1080, Commentary .01(b), provides that the specialist may provide its own quotations, based on its own quote calculation technology, by separately establishing a specialized connection (an SQF) bypassing the Exchange's Auto-Quote system. The SQF user provides such quotes in lieu of the Exchange's Auto-Quote system.

[9] *See* Securities Exchange Act Release No. 44543 (July 12, 2001), 66 FR 37511 (July 18, 2001) (SR–Phlx–2001–26).

Quote or SQF size is greater than the trading interest in the crowd, the specialist would be responsible to fill any orders in excess of such crowd trading interest.

As proposed, for options using the new Auto-Quote technology or SQF, the disseminated size of booked limit orders at the disseminated price would be automatically decremented as executions of inbound orders or cancellations of limit orders at the disseminated price occur.[10] As inbound orders are executed, customer limit orders at the disseminated price would be executed first, in the order in which they were received pursuant to existing Exchange rules. The Exchange's disseminated size would be decremented by the size of the inbound order to be filled. After customer orders at the best bid or offer have been executed, if booked broker-dealer limit orders remain to be executed at the disseminated price, such orders would be executed and decremented in the order in which they were received. The Exchange represents that the specialist would be responsible to manually decrement limit orders represented in the crowd at the disseminated price.[11]

When there are no limit orders at the Exchange's disseminated price, the Exchange proposes that its disseminated size would be the specialist and crowd quotation size established via the new Auto-Quote or SQF. In such a situation, the quotation size would not be decremented automatically. The specialist would, however, have the ability to provide a size for which he and the crowd is firm (unless, as set forth above, a particular crowd participant has vocalized a different quote) each time such specialist revises the quote.

The Phlx represents that it is not proposing to change the functionality of AUTO–X in the instant proposal. The Exchange's disseminated size for options subject to the new Auto-Quote or SQF may differ from the AUTO–X guarantee for the quoted option. Regardless of the disseminated size, the AUTO–X guarantee for a specific option would remain the same. For example, when the Exchange disseminates a quote with a size of 200 contracts, and the AUTO–X guarantee for that option is 100 contracts, and an inbound market or marketable limit order for 200 contracts is received, 100 contracts would be executed automatically via AUTO–X, and 100 contracts would be due for manual execution at the disseminated price by the specialist under the Exchange's rules regarding firm quotations.[12]

Further, the Phlx represents that the proposal would not change the method of allocation of contracts in the crowd. Trades executed manually would continue to be allocated in accordance with Exchange rules. Trades executed automatically via AUTO–X would be allocated by the ''Wheel'' in accordance with Advice F–24, as such trades are allocated today.

Once the Exchange begins to deploy the new Auto-Quote, it will be rolled out over a period of approximately four to six weeks. The instant proposal includes clarifying amendments that reflect the timing of the rollout period. Specifically, the amended proposal would provide that for options that remain subject to the current Auto-Quote technology, the Exchange's disseminated size would continue to be equal to the AUTO–X guarantee for the quoted option or ten contracts if the disseminated quote represents limit orders on the book. The Exchange's disseminated size for options that are subject to the new Auto-Quote technology and options that are subject to an SQF provided for in Phlx Rule 1080.02 would be at least the sum of limit orders at the disseminated price. The specialist and crowd may determine to disseminate a size greater than the sum of the limit orders. If there are no limit orders on the book, the Exchange's disseminated size would be the specialist and crowd's size at the disseminated price. Upon completion of the rollout period, the Exchange represents that it will revisit the rule to delete all references to the current Auto-Quote.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and to promote just and equitable principles of trade, by expanding and further defining the Exchange's disseminated size in its rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change would impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR–Phlx–2002–15 and should be submitted by September 5, 2002.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission believes the proposed rule change is consistent with the section 6(b)(5) of the Act [16] requirement that the rules of an exchange be designed to facilitate transactions in securities, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market

[10] *See* Amendment No. 3.

[11] *Id.*

[12] *See* Phlx Rule 1082, Firm Quotations, and Advice F–7, Bids and Offers.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(5).

system, and, in general, to protect investors and the public interest.

The Commission notes that the proposal, which would establish two methods by which disseminated size is calculated for options traded on the Phlx, is consistent with Rule 11Ac1–1(d) under the Act.[17] The Phlx proposes to maintain its current disseminated size definition for options that are subject to the current Auto-Quote technology and to establish a new disseminated size definition for options that are subject to the new Auto-Quote technology or an SQF. Specifically, for options that utilize the new Auto-Quote technology or which are subject to an SQF, the disseminated size would be at least the sum of the limit orders, unless the specialist and crowd determine to increase such size. The Commission believes that the Exchange's proposal to begin to disseminate the actual size of the limit orders when such orders represent the Exchange's disseminated price should increase transparency by providing more accurate quotation information, which is consistent with Section 11A of the Act.[18]

The Commission believes that the proposal is a positive step toward deployment of the Exchange's new quotes with size system that will disseminate quotations with actual size in all options traded on the Phlx in the future.[19] The Commission believes that disseminating the actual size of quotations should enhance the quality of Phlx's quotation information that is disseminated to the public by more accurately reflecting trading interest on the Phlx.

The Commission finds good cause, consistent with Section 19(b)(2) of the Act,[20] to approve the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission notes that the Phlx has represented that it is technologically capable of implementing the proposal immediately upon approval from the Commission.[21] The Commission believes that accelerated approval of this proposal should permit the Phlx to promptly implement the proposed changes, which should enhance Phlx's quotation information. Accordingly, the Commission finds that there is good cause, consistent with Section 19(b)(2) of the Act,[22] to approve the proposal on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–Phlx–2002–15) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20767 Filed 8–14–02; 8:45 am]

BILLING CODE 8010–01–P

[17] 17 CFR 240.11Ac1–1(d).

[18] 15 U.S.C. 78k–1. The Commission notes that in Section 11A(a)(1)(C)(iii) of the Act, Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability of information with respect to quotations for securities. 15 U.S.C. 78k–1(a)(1)(C)(iii).

[19] Telephone conversation between Richard S. Rudolph, Director and Counsel, Phlx, and Frank N. Genco, Attorney, Division, Commission, on July 2, 2002.

[20] 15 U.S.C. 78s(b)(2).

[21] Telephone conversation between Richard S. Rudolph, Director and Counsel, Phlx, and Frank N. Genco, Attorney, Division, Commission, on July 2, 2002.

[22] 15 U.S.C. 78s(b)(2).

[23] *Id.*

[24] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3424, Amdt. 2]

State of Colorado

In accordance with a notices received from the Federal Emergency Management Agency, dated August 1 and August 6, 2002, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on April 23, 2002 and continuing through August 6, 2002. This declaration is also amended to extend the deadline for filing applications for physical damages as a result of this disaster to September 9, 2002.

All other information remains the same, i.e., the deadline for filing applications for economic injury is March 19, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: August 8, 2002.

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 02–20716 Filed 8–14–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4097]

Office of Counterterrorism; Determination Pursuant to Section 1(b) of Executive Order 13224 Relating to New People's Army/Communist Party of the Philippines and Jose Maria Sison

Acting under the authority of section 1(b) of Executive Order 13224 of September 23, 2001, and in consultation with the Secretary of the Treasury and the Attorney General, the Secretary of State hereby determines that the New People's Army/Communist Party of the Philippines and Jose Maria Sison have committed, or pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, the Secretary of State determines that no prior notice need be provided to any person subject to this determination who might have a constitutional presence in the United States because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Timothy Egert,

Federal Register Liaison, Department of State.

[FR Doc. 02–20774 Filed 8–14–02; 8:45 am]

BILLING CODE 4710–10–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Benefits for Andean Countries: Notice of Request for Public Comment Regarding the Designation of Eligible Countries as Andean Trade Promotion and Drug Eradication Act (ATPDEA) Beneficiary Countries

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Trade Policy Staff Committee (TPSC) is requesting the views of interested parties on whether countries named in the Andean Trade Preference Act (ATPA) (19 U.S.C. 3201), as amended by the Andean Trade Promotion and Drug Eradication Act

(ATPDEA), meet the eligibility criteria provided for in section 204(b)(6)(B) to qualify for enhanced trade benefits under the ATPDEA. This notice addresses the eligibility criteria that must be considered under the ATPDEA, the countries that may be considered for designation as ATPDEA beneficiary countries, and the deadline for written comments. Furthermore, this notice explains how to make written comments on the eligibility criteria elaborated in the ATPDEA. The TPSC, chaired by USTR, will consider comments received in developing recommendations on country eligibility for the President.

DATES: Public comments are due at USTR no later than 5 p.m., September 16, 2002.

ADDRESSES: Submissions by mail or express delivery: Public Reading Room, ATTN: ATPDEA Eligibility, Office of the United States Trade Representative, 1724 F Street, Room F1P1, NW., Washington, DC 20508. Submissions by electronic mail: *FR0030@ustr.gov*. See requirements for submissions below.

FOR FURTHER INFORMATION CONTACT: For procedural questions, please contact: Gloria Blue, Office of the United States Trade Representative, 600 17th Street, NW., Room F516, Washington, DC 20508. The telephone number is (202) 395–3475. For substantive questions, contact Bennett Harman, Office of the Americas, Office of the United States Trade Representative, 600 17th Street, NW., Room 523, Washington, DC 20508. The telephone number is (202) 395–5190.

SUPPLEMENTARY INFORMATION: Signed into law on August 6, 2002, the Trade Act of 2002 contains, in Title XXXI, provisions for enhanced trade benefits for eligible Andean countries. Titled the ''Andean Trade Promotion and Drug Eradication Act'' (ATPDEA), the ATPDEA renews the Andean Trade Preference Act (ATPA), and amends the ATPA to provide preferential treatment for certain products previously excluded from such treatment.

Eligibility Criteria: The enhanced trade benefits under the ATPDEA are available only to countries that the President designates as ''ATPDEA beneficiary countries.'' The criteria that the President must consider in designating countries as ATPDEA beneficiary countries include the criteria in sections 203(c) and (d) that applied to country eligibility under the ATPA, as well as several new criteria added by the ATPDEA.

Section 203(c) provides that the President shall not designate any eligible country as an ATPDEA beneficiary country:

1. If such country is a Communist country;

2. If such country:

a. Has nationalized, expropriated or otherwise seized ownership or control of property owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens,

b. Has taken steps to repudiate or nullify any existing contract or agreement with, or any patent, trademark, or other intellectual property of, a United States citizen or a corporation, partnership, or association, which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property so owned, or

c. Has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless the President determines that:

i. Prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association,

ii. Good-faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

iii. A dispute involving such citizen, corporation, partnership, or association, over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and promptly furnishes a copy of such determination to the Senate and House of Representatives;

3. If such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute;

4. If such country affords preferential treatment to the products of a developed country, other than the United States, and if such preferential treatment has, or is likely to have, a significant adverse effect on United States commerce, unless the President:

a. Has received assurances satisfactory to him that such preferential treatment will be eliminated or that action will be taken to assure that there will be no such significant adverse effect, and

b. Reports those assurances to the Congress;

5. If a government-owned entity in such country engages in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent or such country fails to work towards the provision of adequate and effective protection of intellectual property rights;

6. Unless such country is a signatory to a treaty, convention, protocol, or other agreement regarding the extradition of United States citizens; and

7. If such country has not or is not taking steps to afford internationally recognized worker rights (as defined in section 507(4) of the Trade Act of 1974) to workers in the country (including any designated zone in that country).

Paragraphs 1, 2, 3, 5, and 7 shall not prevent the designation of any country as a beneficiary country under this title if the President determines that such designation will be in the national economic or security interest of the United States and reports such determination to the Congress with his reasons therefor.

Section 203(d) provides that, in determining whether to designate any country as an ATPDEA beneficiary country, the President shall take into account:

1. An expression by such country of its desire to be so designated;

2. The economic conditions in such country, the living standards of its inhabitants, and any other economic factors which he deems appropriate;

3. The extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country;

4. The degree to which such country follows the accepted rules of international trade provided for under the WTO Agreement and the multilateral trade agreements (as such terms are defined in paragraphs (9) and (4), respectively, of section 2 of the Uruguay Round Agreements Act);

5. The degree to which such country uses export subsidies or imposes export performance requirements or local content requirements which distort international trade;

6. The degree to which the trade policies of such country as they relate to other beneficiary countries are contributing to the revitalization of the region;

7. The degree to which such country is undertaking self-help measures to protect its own economic development;

8. Whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights;

9. The extent to which such country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights;

10. The extent to which such country prohibits its nationals from engaging in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent;

11. Whether such country has met the narcotics cooperation certification criteria set forth in section 481(h)(2)(A) [deemed to be a reference to section 490 of the Foreign Assistance Act of 1991 by section 6(a) of Public Law 102–583] of the Foreign Assistance Act of 1961 for eligibility for United States assistance; and

12. The extent to which such country is prepared to cooperate with the United States in the administration of the provisions of this Act.

The new criteria, which are set out at new section 204(b)(6)(B), include the following:

1. Whether the beneficiary country has demonstrated a commitment to undertake its obligations under the WTO, including those agreements listed in section 101(d) of the Uruguay Round Agreements Act, on or ahead of schedule, and participate in negotiations toward the completion of the FTAA or another free trade agreement.

2. The extent to which the country provides protection of intellectual property rights consistent with or greater than the protection afforded under the Agreement on Trade-Related Aspects of Intellectual Property Rights described in section 101(d)(15) of the Uruguay Round Agreements Act.

3. The extent to which the country provides internationally recognized worker rights, including:

a. The right of association;

b. The right to organize and bargain collectively;

c. A prohibition on the use of any form of forced or compulsory labor;

d. A minimum age for the employment of children; and

e. Acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

4. Whether the country has implemented its commitments to eliminate the worst forms of child labor, as defined in section 507(6) of the Trade Act of 1974.

5. The extent to which the country has met the counternarcotics certification criteria set forth in section 4590 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291j) for eligibility for United States assistance.

6. The extent to which the country has taken steps to become a party to and implements the Inter-American Convention Against Corruption.

7. The extent to which the country applies transparent, nondiscriminatory, and competitive procedures in government procurement equivalent to those contained in the Agreement on Government Procurement described in section 101(d)(17) of the Uruguay Round Agreements Act, and contributes to efforts in international fora to develop and implement rules on transparency in government procurement.

8. The extent to which the country has taken steps to support the efforts of the United States to combat terrorism.

Countries Considered To Be Andean Beneficiary Countries: The following countries may be considered for designation as ATPDEA beneficiary countries:

Bolivia
Colombia
Ecuador
Peru

Submitting Comments: Comments may be submitted by mail, express delivery service, or e-mail (to *FR0030@ustr.gov*). It is strongly recommended that comments submitted by mail or express delivery service also be sent by e-mail. Persons making submissions by e-mail should use the following subject line: ''ATPDEA Eligibility.'' Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the characters ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Persons submitting written comments by mail or express delivery service should provide 20 copies, in English.

Written comments, notices of testimony, and testimony will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file may be made by calling (202) 395–6186. Appointments must be scheduled at least 48 hours in advance.

Christopher S. Wilson,

Acting Assistant United States Trade Representative for the Americas.

[FR Doc. 02–20715 Filed 8–14–02; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–13028]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Chemical Transportation Advisory Committee (CTAC) will meet to discuss various issues relating to the marine transportation of hazardous materials in bulk. These meetings will be open to the public.

DATES: CTAC will meet on Tuesday, October 8, 2002, from 1 p.m. to 4 p.m. and on Wednesday, October 9, 2002, from 9 a.m. to 3:30 p.m. These meetings may close early if all business is finished. Written material and requests

to make oral presentations should reach the Coast Guard on or before September 25, 2002. Requests to have a copy of your material distributed to each member of the Committee should reach the Coast Guard on or before September 25, 2002.

ADDRESSES: Meetings will be held in room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. Send written material and requests to make oral presentations to Commander James M. Michalowski, Executive Director of CTAC, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Commander James M. Michalowski, Executive Director of CTAC, or Ms. Sara Ju, Assistant to the Executive Director, telephone 202–267–1217, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting on Tuesday, October 8, 2002

(1) Introduction of Committee members and attendees.
(2) Discussion of ways that CTAC can improve work distribution and outreach to the public.
(3) Discussion of steps that can be taken to increase public interest in Committee and subcommittee work.
(4) Discussion of future subcommittee initiatives.

Agenda of Meeting on Wednesday, October 9, 2002

(1) Introduction of Committee members and attendees.
(2) Final reports from the Prevention Through People, Hazardous Substances Response Standards, and Vessel Cargo Tank Overpressurization Subcommittees.
(3) Discussion and vote to establish a new subcommittee on hazardous material marine transportation security.
(4) A presentation by the Coast Guard Research and Development Center on the use of fuel cells in the marine environment.
(5) A presentation by Shell Chemical Company on vessel vetting systems and quality assurance issues.
(6) Update of Coast Guard Regulatory Projects and IMO Activities.

Procedural

These meetings are open to the public. Please note that the meetings may close early if all business is finished. At the discretion of the Chair, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director and submit written material on or before September 25, 2002. If you would like a copy of your material distributed to each member of the Committee in advance of a meeting, please submit 25 copies to the Executive Director (*see* **ADDRESSES**) no later than September 25, 2002.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, telephone the Executive Director at 202–267–0087 as soon as possible.

Dated: August 7, 2002.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 02–20752 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–13074]

National Offshore Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting.

SUMMARY: The Liftboat Subcommittee of the National Offshore Safety Advisory Committee (NOSAC) will meet to discuss various issues as outlined in the agenda. The meeting will be open to the public.

DATES: The Liftboat Subcommittee will meet on Thursday, September 5, 2002, from 9 a.m. to 12 noon. The meeting may close early if all business is finished. Requests to make oral presentations should reach the Coast Guard on or before August 29, 2002.

ADDRESSES: The Subcommittee will meet in the main conference room, of the Superior Energy Services Bldg, 1209 Peters Rood, Harvey, Louisiana. Send written material and requests to make oral presentations to James M. Magill, Assistant Executive Director of NOSAC, Commandant (G–MSO–2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: James M. Magill, Assistant Executive Director of NOSAC, telephone 202–267–1082, fax 202–267–4570, or e-mail at: jmagill@comdt.uscg.mil.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

(1) Welcoming remarks
(2) Discussion on Task Statement
(3) Presentations
(4) Questions, general discussion and roundtable
(5) Questions from public attendees
(6) Adjourn

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentation during the meeting. If you would like to make an oral presentation at the meeting, please notify the Assistant Executive Director no later than August 29, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Assistant Executive Director as soon as possible.

Dated: August 8, 2002.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 02–20751 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–13057]

Carriage of Navigation Equipment for Ships on International Voyages

AGENCY: Coast Guard, DOT.

ACTION: Notice of policy.

SUMMARY: The Coast Guard is announcing its policy for resolving conflicts between its own regulations on navigation equipment on ships and the recent amendments to the International Convention for the Safety of Life at Sea, 1974, (SOLAS). The amendments to SOLAS entered into force on July 1, 2002. Until the Coast Guard can align its regulations with these amendments, this policy should benefit ship owners and

operators by relieving them of the need to meet existing Coast Guard regulations that are incompatible with or duplicitous of the new SOLAS requirements.

DATES: This policy is effective August 15, 2002.

ADDRESSES: Documents mentioned in this notice are part of docket USCG–2002–13057 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, contact LT Alan Blume, Office of Vessel Traffic Management, U.S. Coast Guard Headquarters, telephone 202–267–0550; e-mail ablume@comdt.uscg.mil. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Background

In December 2000, the International Maritime Organization amended chapter V of the International Convention for the Safety of Life at Sea, 1974, (SOLAS) at the 73rd Session of the Maritime Safety Committee. The amendments were accepted by the Contracting Governments to SOLAS on January 1, 2002, and entered into force on July 1, 2002. These amendments, in part, added requirements for the carriage of voyage data recorders (VDR) and automatic identification systems (AIS), changed the existing tonnage thresholds used to establish carriage requirements for some navigation equipment, and allowed an electronic chart display and information systems (ECDIS) to be accepted as meeting the chart carriage requirements of chapter V. Because of these amendments, the Coast Guard will need to align its regulations in titles 33 and 46 of the Code of Federal Regulations, especially those in 33 CFR part 164, with these amendments. Until this alignment occurs, problems may result due to the inconsistencies between chapter V and Coast Guard regulations. For example, if a ship owner elects to install ECDIS, the ship may still be required under 33 CFR 164.33 to carry paper nautical charts.

Policy Statement

Until the Coast Guard aligns its regulations with the amendments to SOLAS chapter V, the following policy applies:

For ships to which this policy applies, when an amendment to chapter V and a provision in Coast Guard regulations address the same navigational safety concern and when applying both would result in an unnecessary duplication, the Coast Guard will accept the provision under chapter V as meeting the corresponding Coast Guard regulation. In other words, if a ship has an approved ECDIS installed according to chapter V, the ECDIS will be considered by the Coast Guard as meeting its nautical chart regulation in 33 CFR 164.33(a)(1), since the ECDIS meets the same navigational safety concerns as do paper nautical charts. This policy benefits the ship owner and operator by relieving them of the need to unnecessarily duplicate equipment.

Under SOLAS, chapter I, regulation 12, the Coast Guard will not issue SOLAS certificates to U.S.-flag ships that are not in full compliance with the applicable requirements of the new SOLAS, chapter V. The Coast Guard will continue to exercise port state control authority under SOLAS, chapter I, regulation 19, for foreign-flag ships that are not in compliance with the applicable requirements of SOLAS, chapter V.

What Ships Are Affected?

This policy applies to the following ships, which are subject to the amendments to chapter V:

1. U.S.-flag ships of 150 or more gross tons that engage on international voyages.

2. U.S.-flag ships certificated solely for service on the Great Lakes and the St. Lawrence River as far east as a straight line drawn from Cap de Rosiers to West Point, Anticosti Island, and, on the north side of Anticosti Island, the 63rd Meridian.

3. Foreign-flag ships to which SOLAS, chapter V, applies that are operating on the navigable waters of the United States.

Note that U.S.-flag ships without mechanical means of propulsion are exempt from certain requirements of SOLAS under SOLAS, chapter V, regulation 3.1.

This policy is not applicable to U.S.-flag ships engaged only on domestic voyages. These ships must continue to comply with the existing navigation equipment requirements in titles 33 and 46 CFR until they are amended.

How Long Will This Policy Remain in Effect?

This policy will remain in effect until titles 33 and 46 CFR are aligned with SOLAS, chapter V, or until August 16, 2004, whichever is earlier. The Coast Guard will publish a second notice to extend this policy if the necessary regulations are not in place within two years.

Dated: August 9, 2002.

Joseph J. Angelo,

Acting Assistant Commandant Marine Safety, Security and Environmental Protection.

[FR Doc. 02–20753 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–05–C–00–PNS To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Pensacola Regional Airport, Pensacola, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Pensacola Regional Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 16, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, Suite 400, 5950 Hazeltine National Drive, Orlando, Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Frank Miller, Airport Director of the City of Pensacola at the following address: Pensacola Regional Airport, 2430 Airport Blvd., Suite 225, Pensacola, Florida 32504. Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Pensacola under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Farris, Program Manager, Orlando Airports District Office, Suite 400, 5950 Hazeltine National Drive, Orlando, Florida 32822, (407) 812–6331 Ext. 25. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at

Pensacola Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 9, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Pensacola was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 12, 2002.

The following is a brief overview of the application.

Proposed charge effective date: September 1, 2007.

Proposed charge expiration date: December 1, 2007.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $350,000.

Brief description of proposed project(s): Impose and Use: FY02 Heightened Security Costs Class or classes of air carriers which the public agency has requested not be required to collect PFCs: air taxi/commercial operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration Southern Region Headquarters/ASO–600, 1701 Columbia Ave., College Park, Georgia 30337.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Pensacola.

Issued in Orlando, Florida on August 9, 2002.

John W. Reynolds, Jr.,

Assistant Manager, Airports Division, Southern Region.

[FR Doc. 02–20765 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Livingston County, MI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Tier 2 Environmental Impact Statement (EIS) will be prepared for construction impacts of the widening of M–59 from I–96 to US–23 in Livingston County, Michigan. A Record of Decision (ROD) for the Tier 1 EIS right-of-way preservation was signed on May 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Abdelmoez Abdalla, Environmental Program Manager, Federal Highway Administration, 315 W. Allegan Street, Room 207, Lansing, Michigan 48933, Telephone (517) 702–1820 or Mr. Paul W. McAllister, Project Coordination Unit, Bureau of Transportation Planning, PO Box 30050, Lansing, Michigan 48909, Telephone (517) 335–2622.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Michigan Department of Transportation (MDOT) will prepare a Tier 2 EIS for the widening of M–59 from I–96 to US–23 in Livingston County, Michigan. The corridor is approximately 12.8 miles long. The area long M–59 is currently experiencing intense development pressure and traffic congestion problems. The proposed project will accommodate the projected year 2025 traffic volume and improve motorist safety. The current facility is two lanes. The project alternatives include: (1) The no build, (2) widening from two to five lanes, and (3) widening from two lanes to a four-lane boulevard, with some five-lane areas. The widening will occur within a 300-foot right-of-way corridor preserved by a Tier 1 EIS along the existing route of M–59. Scoping documents describing the proposed action and soliciting comments will be sent to appropriate Federal, state, local agencies, private organizations, and citizens who have previously expressed or are known to have interest in this proposal. A public information meeting was held on November 7, 2001, to provide the public the opportunity to discuss the proposed action. A public hearing will also be held. Public notice will be given of the time and place of the public hearing. The Tier 2 Draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is scheduled at this time. Comments and suggestions are invited from all interested parties to insure that the full range of issues related to this proposed action are addressed and all significant issues are identified. Questions or comments concerning this proposed action and the EIS should be directed to the FHWA address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 5, 2002.

James J. Steele,

Division Administrator, Lansing, Michigan.

[FR Doc. 02–20721 Filed 8–14–02; 8:45 am]

BILLING CODE 4410–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13079]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ARGONAUT.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 16, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13079. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* ARGONAUT. *Owner:* Windships America Inc.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* ''This vessel is 50.3 feet in length, 15.5 feet in breadth, and the net tonnage is 31 NRT.''

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* ''The intended use is day charter in the waters off New York and New England, based in Greenport, LI, NY.''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1965. *Place of construction:* Muiden, the Netherlands.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''The granting of this waiver should have no adverse effect on current commercial passenger vessel operators. Restricting the number of passengers to twelve will not interfere with the current charter business aboard the Mary E, the only other working charter vessel in Greenport. My previous experience in Greenport was in 2000, as Captain of the Malabar, a charter vessel that has since been sold for charter operations in Florida.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''The granting of this waiver will have no adverse effect on US shipyards. Maintenance work on this vessel has been performed at Greenport Yacht & Shipbuilding Co., Greenport, NY.''

Dated: August 9, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–20780 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13080]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ARGONAUT II.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 16, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13080. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* ARGONAUT II. *Owner:* David J. Walker.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* ''size of Vessel: Seventy-three feet (73′), *Capacity:* 51.77 Gross Tonnage, 23.76 Net Tonnage.''

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* ''Small Charter vessel for the purpose of taking out passengers of no more than twelve (12) for the purpose of scattering the ash remains of a beloved one upon the sea using a traditional group ritual, whereby providing a unique, elegant and affordable alternative to beloved ones and their families.'' ''Near coastal waters of Washington, including Puget Sound, Inland Waterways, Strait of Juan de Fuca and S.E. Alaska.''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* June 21, 1922. *Place of construction:* Meuchions Shipyard in Vancouver, Canada.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* ''There will be little impact if any on other vessel operators, as there is no one, to my knowledge, providing this service in this area. We will be using a vintage mission and church vessel that has a documented history of community service.''

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* ''The adverse impact of this waiver will have on U.S. shipyards will be minimal. As a matter of fact this eighty-year-old wooden vessel will require much more upkeep in the coming years. This should give the smaller local yards much needed shipwright work. At the present time the owner is seeking the assistance of local shipyards for maintenance and moorage for the vessel.''

Dated: August 9, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–20779 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13084]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel AVALANCHE.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 16, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13084. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* AVALANCHE. *Owner:* Dutch Harbor Fisheries.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* ''Gross: 49, Net: 44, Length: 60.0 ft., Breadth: 16.3 ft., Depth: 10.2 ft.''

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* ''We would like to charter along the northeast coast of the U.S. to include the coasts of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland and Virginia (from Maine to the Chesapeake Bay).''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1986. *Place of construction:* Trehard yard in Antibes, France.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* ''We do so little chartering in New England, just one week in the last two years that this waiver will not have any material impact on other American made charter sailboats.''

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* ''In summary, we cannot anticipate anything except our spending even more money in American shipyards as a result of this waiver with little or no impact on existing US built charter fleet.''

Dated: August 9, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–20778 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13078]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel DREAM SEEKER.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub.

L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 16, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13078. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* DREAM SEEKER. *Owner:* Atkinson Management, LLC.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* ''Length 66.8 ft., Beam 20.0 ft., Draft 9.0 ft., Gross Tonnage 92 ITC, Net Tonnage 27 ITC.''

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* ''Occasional charters along the West Coast of the U.S.; we are expecting to do this approximately twelve (12) times a year. The charters will be for up to six (6) passengers on overnight trips lasting one (1) week or two (2) in duration. Additionally, we may entertain up to twelve (12) passengers on occasion for day sails or executive luncheons. Intended operations will be the West Coast of the United States, from the Canadian border to the Mexican border, more specifically from the Seattle area and the San Juan Islands south to San Diego Bay. Therefore we are requesting a waiver that would be valid in the western coastal U.S. waters.''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1998. *Place of construction:* Kaohsiung, Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* ''Given that we are expecting to charter the vessel only twelve or so times a year, for six (6) or less passengers, interested in longer duration coastal cruises, the approval of this application will not have an adverse effect on existing passenger operators.''

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* ''This waiver will have no adverse effect on U.S. Shipyards; it in fact has a very positive fiscal impact. In the last full calendar year approximately $10,000.00 has been spent on maintaining and upgrading the vessel all of which was done in U.S. Shipyards. All maintenance and additional work on the vessel will be carried out in U.S. Shipyards and it is estimated that expenditures for this calendar year should also approach the $10,000.00 mark.''

Dated: August 9, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–20781 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13087]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel GERDA III.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 16, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13087. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build

requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* GERDA III. *Owner:* Museum of Jewish Heritage.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* ''GERDA III's principle dimensions are: Length 39′9″, Beam 14′, Draft 5′10″. The vessel measures 14 Net tons.''

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:*

''We are seeking an Administrative Waiver of Coastwise Trade Laws of the United States in order for GERDA III to be considered an Uninspected Passenger Vessel carrying six or fewer passengers. While the vessel is primarily a static exhibit, we wish to occasionally carry persons other than crew on short day voyages. In strict interpretation of Coastwise Laws these persons other than crew would be construed as passengers—''consideration'' possibly being a condition of their carriage. This consideration could be in the form of past, present or future donations of money, goods or services to the owner of the vessel. The purposes of these occasional daysails would be fundraising and development. Limits of navigation would be between New York Harbor and Mystic, Connecticut.''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1928. *Place of construction:* Denmark. ''Later rebuilt in 1992 by the Ring Anderson Shipyard in Copenhagen.''

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* ''We expect no direct impact on other commercial passenger vessel operations as a result of the granting this waiver. The vessel will remain principally a static exhibit and only operate as a six passenger Uninspected Passenger Vessel occasionally to attend events and festivals in within the geographical limits described above. It is anticipated the vessels will operate as a UPV fewer than twenty days per year. This operation will not be competitive with other operations and will not be widely promoted. It is anticipated operation will be limited to Museum members and other 'inside' supporters. However this waiver will allow more flexible use of the vessel as a fundraising asset of the Museum and insure complete compliance with Coastwise Navigation Laws of the U.S.''

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* ''The granting of this waiver will have no negative impact on U.S. shipyards. Annual maintenance of GERDA III will continue as it has since the vessel arrived in the U.S. Daily caretaking responsibilities are performed by Mystic Seaport staff and volunteers at the duPont Preservation Shipyard at Mystic Seaport, with seasonal haulout performed by local boatyards and independent maintenance and repair contractors in southeastern Connecticut, adding to the maritime economy of this region.''

Dated: August 9, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–20775 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13081]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel LA PANTHERE.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 16, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13081. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: LA PANTHERE. Owner: Peter C. Gentry and Kathy Rae Longworth-Gentry.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''52.5 feet on deck, breadth 15 feet, depth 7 feet Tonnage: 20 GRT and 18 NRT.''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant:

''Occasional and seasonal charter use for small groups (12 or less) interested in learning sail handling and sailing properties of a square rigged, iron hulled Brigantine schooner. This use will be limited to the Atlantic Coast and Caribbean waters off the continental United States.''

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1930. Place of construction: Baasrode Shipyards and Ironworks, Baasrode, Belgium.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''We do not anticipate any adverse impact on current passenger operations as most all the operators in the region are larger, 50 passengers and up. Smaller vessel are not impacted as we have decidedly different vessel whose handling and sail characteristics differ markedly from those more modern, appealing to another sector of the interested public.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''We do not anticipate any detrimental impact on US Shipyards, in fact our restoration of this vessel, due to her older style riveted iron hull may provide opportunities for US Shipyards to maintain skill sets that are being lost due to the predominance of welding and forging techniques over the last 50 years.''

Dated: August 9, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–20784 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13082]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel LEVITY.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 16, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13082. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, D.C. 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: LEVITY. Owner: Stephen Perry.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''Length: 35.2 ft., Hull Breadth: 10.4 ft., Hull depth: 5.5 ft., Gross Tonnage: 10, Net tonnage: 9.''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: Sailboat chartering trips for up to six people. U.S. East Coast (Maine to Florida) and the U.S. Virgin Islands.''

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1973. Place of construction: Gosport, Hampshire, England.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''I do not believe this waiver will impact commercial vessels in any way from such a small operation of one boat.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''None, to my knowledge.''

Dated: August 9, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–20783 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13086]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MERCEDES.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 16, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13086. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* MERCEDES. *Owner:* Krystal Charters.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* ''Vessel Length: 83 Feet, Capacity: 6 persons plus 4 crew, Tonnage: 111 GRT, 88 NRT.''

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* ''We run a very exclusive Charter operation to VIP's who visit Newport Beach. We only take out 6 people for a minimum of three day trips so that we can give the best possible service. We are the only yacht in this area that can give this level of service.'' ''Geographic Region: U.S. West Coast-Alaska to Mexico.''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1987. *Place of construction:* Viaregio, Italy.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* ''MERCEDES caters to a very exclusive clientele. We are one of just a few on the entire West Coast and the only one in Orange County that offers this service. Therefore, we are not a threat to the other vessels in our area which are generally harbor excursion vessels carrying up to 300 passengers.''

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* ''This waiver will have no impact on U.S. Shipyards as it is for vessels over 3 years old.''

Dated: August 9, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–20777 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13077]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PASSAGE.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 16, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13077. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime

Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: PASSAGE. Owner: Walter Wright.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''Length 64.3 ft., Beam 19.0 ft., Draft 9.5 ft., Gross Tonnage 58, Net Tonnage 52.''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: Occasional charters along the west coast of the U.S. The charters will be for six (6) passengers to twelve (12) passengers on occasion for day sails or private charters. Intended operations will be the west coast of the United States, from the Canadian border to the Mexican border, more specifically from the Seattle area and the San Juan Islands south to San Diego Bay. Therefore we are requesting a waiver that would be valid in the western coastal U.S. waters.''

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1966. Place of construction: Muiden, Holland, Netherlands.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''There are very few operators that provide for sailing charters along the west coast, even less offer vessels that are in size range of Passage, which comfortably accommodates six (6) to twelve (12) passengers. Therefore the approval of this application will not have an adverse effect on existing operators.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''This waiver will have no adverse effect on U.S. Shipyards; it in fact will have a positive fiscal impact. In the last calendar year approximately $4,000.00 has been spent on maintenance and upgrading the vessel all of which was done in U.S. Shipyards. The vessel has a steel hull that requires extensive maintenance yearly, all of which will be carried out in U.S. Shipyards.''

Dated: August 9, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–20782 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13085]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SONG & DANCE.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 16, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13085. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* SONG & DANCE. *Owner:* Kemmerer, LLC.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* ''Length: 52.1–Breadth: 15.2–Depth: 8.2; 32 GRT–29 NRT.''

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* ''Personal and charter—eastern coast of the U.S.''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1991. *Place of construction:* Tam Shui, Taipei, Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* ''None.''

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* ''None.''

Dated: August 9, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–20776 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13083]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SOUTHERN BELLE.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 16, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13083. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: SOUTHERN BELLE. Owner: James E. Bulluck.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''Size: 35.9′ GRT 23.''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: ''Coastal Cruising in Georgia. If possible I would like to include lower SC as it is just across the Savannah River.''

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1981. Place of construction: Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''I am the only operator of this vessel, and am not aware of but one other commercial vessel in my immediate area. I currently operate the vessel for my family vacations and weekends.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''There is only one yard in my area, Palmer Johnson in Savannah which is far as I know do not charter.''

Dated: August 9, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–20785 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Third-Party Disclosure in IRS Regulations; Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing regulations, Third-Party Disclosure Requirements in IRS Regulations.

DATES: Written comments should be received on or before October 15, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carol Savage, (202) 622–3945, or through the Internet *(CAROL.A.SAVAGE@irs.gov.)*, Internal Revenue Service, Room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Third-Party Disclosure Requirements in IRS Regulations.

OMB Number: 1545–1466.

Abstract: These existing regulations contain third-party disclosure requirements that are subject to the Paperwork Reduction Act of 1995.

Current Actions: There are no changes being made to these regulations at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit

organizations, and not-for-profit institutions.

Estimated Number of Respondents: 245,824,890.

Estimated Time Per Respondent: Varies.

Estimated Total Annual Burden Hours: 69,927,555.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 8, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–20760 Filed 8–14–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 99–32

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 99–32, Conforming Adjustments Subsequent to Section 482 Allocations.

DATES: Written comments should be received on or before October 15, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Conforming Adjustments Subsequent to Section 482 Allocations.

OMB Number: 1545–1657.

Revenue Procedure Number: Revenue Procedure 99–32.

Abstract: Revenue Procedure 98–32 provides guidance for conforming a taxpayer's accounts to reflect a primary adjustment under Internal Revenue Code section 482. The revenue procedure prescribes the applicable procedures for the repatriation of cash by a United States taxpayer via an interest-bearing account receivable or payable in an amount corresponding to the amount allocated under Code section 482 from, or to, a related person with respect to a controlled transaction.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 180.

Estimated Time Per Respondent: 9 hours.

Estimated Total Annual Burden Hours: 1,620.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 8, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–20761 Filed 8–14–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209827–96 and REG–111672–99]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–209827–96 and REG–111672–99 (TD 8834), Treatment of Distributions to Foreign Persons Under Sections 367(e)(1) and

367(e)(2) (§§ 1.367(e)–1, 1.367(e)–2, and 1.6038B–1).

DATES: Written comments should be received on or before October 15, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Carol Savage, (202) 622–3945, or through the internet *(CAROL.A.SAVAGE@irs.gov.),* Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Treatment of Distributions to Foreign Persons Under Sections 367(e)(1) and 367(e)(2).

OMB Number: 1545–1487.

Regulation Project Number: REG–209827–96 and REG–111672–99.

Abstract: Sections 367(e)(1) and 367(e)(2) provide for gain recognition on certain transfers to foreign persons under sections 355 and 332. Section 6038B(a) requires U.S. persons transferring property to foreign persons in exchanges described in sections 332 and 355 to furnish information regarding such transfers. This information is used by the Internal Revenue Service to verify whether a taxpayer is entitled to an exemption from income tax.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 217.

Estimated Time Per Respondent: 11 hours, 23 minutes.

Estimated Total Annual Burden Hours: 2,471.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 8, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–20762 Filed 8–14–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2120

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2120, Multiple Support Declaration.

DATES: Written comments should be received on or before October 15, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet *(CAROL.A.SAVAGE@irs.gov.),* Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Multiple Support Declaration.

OMB Number: 1545–0071.

Form Number: A taxpayer who pays more than 10%, but less than 50%, of the support for an individual may claim that individual as a dependent for tax purposes provided the taxpayer attaches declarations from anyone else providing at least 10% support stating that they will not claim the dependent. This form is used to show that the other contributors have agreed not to claim the individual as a dependent.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 11,000.

Estimated Time Per Respondent: 32 minutes.

Estimated Total Annual Burden Hours: 5,830.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 7, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–20763 Filed 8–14–02; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 67, No. 158

Thursday, August 15, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army

Availabililty for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Chimeric Filovirus Glycoprotein

Correction

In notice document 02–19714 appearing on page 50651 in the issue of Monday, August 5, 2002 make the following corrections:

1. On page 50651, in the second column, the subject line is corrected to read as set forth above.

2. On the same page, in the same column, in the second line from the bottom, ''submit'' should read ''subunit''.

[FR Doc. C2–19714 Filed 8–14–02; 10:22 am]

BILLING CODE 1505–01–D

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

Correction

In notice document 02–20210 appearing on page 51583 in the issue of Thursday, August 8, 2002, make the following correction:

On page 51583, in the first column, under **STATUS**, in the first line, ''closed'' should read ''open''.

[FR Doc. C2–20210 Filed 8–14–02; 10:22 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

1018-AH08

Endangered and Threatened Wildlife and Plants; Designating Critical Habitat for Plant Species from the Island of Molokai, HI

Correction

Proposed rule document 02-20340 was inadvertently published in the Rules and Regulations section in the issue of Monday August 12, 2002, beginning on page 52419. It should have appeared in the Proposed Rules section.

[FR Doc. C2–20340 Filed 8–14–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
August 15, 2002

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 39

Airworthiness Directives: Boeing Model 727 Series Airplanes; Final Rules

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–232–AD; Amendment 39–12858; AD 2002–16–19]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes Modified in Accordance With Supplemental Type Certificate SA1767SO or SA1768SO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger- to a cargo-carrying (''freighter'') configuration, that requires, among other actions, installation of a fail-safe hinge, redesigned main deck cargo door warning and power control systems, and 9g crash barrier. This amendment is prompted by the FAA's determination that the main deck cargo door hinge is not fail-safe; that certain main deck cargo door control systems do not provide an adequate level of safety; and that the main deck cargo barrier is not structurally adequate during an emergency landing. The actions specified by this AD are intended to prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane, including possible loss of flight control or severe structural damage; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants.

DATES: Effective September 19, 2002.

ADDRESSES: Information pertaining to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Paul Sconyers, Associate Manager, Airframe and Propulsion Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703–6076; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger- to a cargo-carrying (''freighter'') configuration was published in the **Federal Register** on November 12, 1999 (64 FR 61554). That action proposed to require, among other actions, installation of a fail-safe hinge, redesigned main deck cargo door warning and power control systems, and 9g crash barrier.

Background

For the convenience of the reader, certain excerpts and information, below, from the following sections of the preamble of the notice of proposed rulemaking (NPRM) are provided in this final rule: Discussion, Main Deck Cargo Door Hinge, Main Deck Cargo Door Systems, and Cargo Restraint Barrier.

Discussion

Supplemental Type Certificate (STC) SA1767SO (held by FedEx) specifies a design for a main deck cargo door, associated cargo door cutout, and door systems. STC SA1768SO (held by FedEx) specifies a design for a Class ''E'' cargo interior with a cargo restraint barrier net. As discussed in NPRM, Rules Docket No. 97–NM–09–AD (the final rule, AD 98–26–18, amendment 39–10961, was published in the **Federal Register** on January 12, 1999 (64 FR 1994)), which is applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger- to a cargo-carrying (''freighter'') configuration, the FAA has conducted a design review of Boeing Model 727 series airplanes modified in accordance with STCs SA1767SO and SA1768SO and has identified several potential unsafe conditions. (Results of this design review are contained in ''FAA Freighter Conversion STC Review, Report Number 2, dated October 16–18, 1996,'' hereinafter referred to as ''the Design Review Report,'' which is included in the Rules Docket 97–NM–232–AD.) This NPRM proposes corrective action for three of those potential unsafe conditions that relate to the following three areas: main deck cargo door hinge, main deck cargo door systems, and main deck cargo barrier.

Main Deck Cargo Door Hinge

In order to avoid catastrophic structural failure, it has been a typical industry approach to design outward opening cargo doors and their attaching structure to be fail-safe (*i.e.*, designed so that if a single structural element fails, other structural elements are able to carry resulting loads). Another potential design approach is safe-life, where the critical structure is shown by analyses and/or tests to be capable of withstanding the repeated loads of variable magnitude expected in service for a specific service life. Safe-life is usually not used on critical structure because it is difficult to account for manufacturing or in-service accidental damage. For this reason, plus the fact that none of the STC holders have provided data in support of this approach, the safe-life approach will not be discussed further regarding the design and construction of the main deck cargo door hinge.

Structural elements such as the main deck cargo door hinge are subject to severe in-service operating conditions that could result in corrosion, binding, or seizure of the hinge. These conditions, in addition to the normal operational loads, can lead to early and unpredictable fatigue cracking. If a main deck cargo door hinge is not a fail-safe design, a fatigue crack could initiate and propagate longitudinally undetected, which could lead to a complete hinge failure. A possible consequence of this undetected failure is the opening of the main deck cargo door while the airplane is in flight. Service experience indicates that the opening of a cargo door while the airplane is in flight can be extremely hazardous in a variety of ways including possible loss of flight control, severe structural damage, or rapid decompression, any of which could lead to loss of the airplane.

The design of the main deck cargo door hinge must be in compliance with Civil Air Regulations (CAR) part 4b, including CAR § 4b.270, which requires, in part, that catastrophic failure or excessive structural deformation, which could adversely affect the flight characteristics of the airplane, is not probable after fatigue failure or obvious partial failure of a single principal structural element. One common feature of a fail-safe hinge design is a division of the hinge into multiple segments such that, following failure of any one segment, the remaining segments would support the redistributed load.

The main deck cargo door installed in accordance with STC SA1767SO is supported by latches along the bottom of the door and one continuous hinge along the top. This single-piece hinge is considered a critical structural element for this STC. A crack that initiates and propagates longitudinally along the hinge line of the continuous hinge will eventually result in failure of the entire hinge, because there is no segmenting of

the hinge to interrupt the crack propagation and support the redistributed loads. Failure of the entire hinge can result in the opening of the main deck cargo door while the airplane is in flight.

As discussed in the Design Review Report, an inspection of one Boeing Model 727 series airplane modified in accordance with STCs SA1767SO and SA1768SO revealed a number of fasteners with both short edge margins and short spacing in the cargo door cutout external doublers. Some edge margins were as small as one fastener diameter. Fasteners that are placed too close to the edge of a structural member or spaced too close to an adjacent fastener can result in inadequate joint strength and stress concentrations, which may result in fatigue cracking of the skin. If such defects were to exist in the structure of the door or the fuselage to which the main deck cargo door hinge is attached, the attachment of the hinge could fail, and consequently cause the door to open while the airplane is in flight.

Main Deck Cargo Door Systems

In early 1989, two transport airplane accidents were attributed to cargo doors coming open during flight. The first accident involved a Boeing 747 series airplane in which the cargo door separated from the airplane, and damaged the fuselage structure, engines, and passenger cabin. The second accident involved a McDonnell Douglas DC–9 series airplane in which the cargo door opened but did not separate from its hinge. The open door disturbed the airflow over the empennage, which resulted in loss of flight control and consequent loss of the airplane. Although cargo doors have opened occasionally without mishap during takeoff, these two accidents serve to highlight the extreme potential dangers associated with the opening of a cargo door while the airplane is in flight.

As a result of these cargo door opening accidents, the Air Transport Association (ATA) of America formed a task force, including representatives of the FAA, to review the design, manufacture, maintenance, and operation of airplanes fitted with outward opening cargo doors, and to make recommendations to prevent inadvertent cargo door openings while the airplane is in flight. A design working group was tasked with reviewing 14 CFR 25.783 (and its accompanying Advisory Circular (AC) 25.783–1, dated December 10, 1986) with the intent of clarifying its contents and recommending revisions to enhance future cargo door designs. This design group also was tasked with providing specific recommendations regarding design criteria to be applied to existing outward opening cargo doors to ensure that inadvertent openings would not occur in the current transport category fleet of airplanes.

The ATA task force made its recommendations in the ''ATA Cargo Door Task Force Final Report,'' dated May 15, 1991 (hereinafter referred to as ''the ATA Final Report''). On March 20, 1992, the FAA issued a memorandum to the Director-Airworthiness and Technical Standards of ATA (hereinafter referred to as ''the FAA Memorandum''), acknowledging ATA's recommendations and providing additional guidance for purposes of assessing the continuing airworthiness of existing designs of outward opening doors. The FAA Memorandum was not intended to upgrade the certification basis of the various airplanes, but rather to identify criteria to evaluate potential unsafe conditions demonstrated on in-service airplanes. Appendix 1 of this AD contains the specific paragraphs from the FAA Memorandum that set forth the criteria to which the outward opening doors should be shown to comply.

Applying the applicable requirements of CAR part 4b and design criteria provided by the FAA Memorandum, the FAA has reviewed the original type design of major transport airplanes, including Boeing 727 airplanes equipped with outward opening doors, for any design deficiency or service difficulty. Based on that review, the FAA identified unsafe conditions and issued, among others, the following ADs:

- For certain McDonnell Douglas Model DC–9 series airplanes: AD 89–11–02, amendment 39–6216 (54 FR 21416, May 18, 1989);
- For all Boeing Model 747 series airplanes: AD 90–09–06, amendment 39–6581 (55 FR 15217, April 23, 1990);
- For certain McDonnell Douglas Model DC–8 series airplanes: AD 93–20–02, amendment 39–8709 (58 FR 471545, October 18, 1993);
- For certain Boeing Model 747–100 and –200 series airplanes: AD 96–01–51, amendment 39–9492 (61 FR 1703, January 23, 1996); and
- For certain Boeing Model 727–100 and –200 series airplanes: AD 96–16–08, amendment 39–9708 (61 FR 41733, August 12, 1996).

Using the criteria specified in the ATA Final Report and the FAA Memorandum as evaluation guides, the FAA conducted an engineering design review and inspection of an airplane modified in accordance with STCs SA1767SO and SA1768SO (held by FedEx). The FAA identified a number of unsafe conditions with the main deck cargo door systems of these STCs. The FAA design review team determined that the design data of these STCs did not include a safety analysis of the main deck cargo door systems.

As specified in the criteria contained in Appendix 1 of this AD, for powered lock systems on the main deck cargo door, it must be shown by safety analysis that inadvertent opening of the door after it is fully closed, latched, and locked is extremely improbable. However, the FAA is aware of two events in which the main deck cargo door open during flight. These events occurred on FedEx passenger/freighter conversion STCs in December 9, 1994, and March 1995. These events are referenced in the Design Review Report.

For airplanes modified in accordance with STC SA1767SO or SA1768SO, the FAA considers the following four specific design deficiencies of the main deck cargo door systems to be unsafe:

1. Indication System

The main deck cargo door indication system for STCs SA1767SO and SA1768SO uses a warning light at the door operator's control panel and a light at the flight engineer's panel. Both of these lights indicate directly the status of the cargo door latch and lock positions and indicate indirectly the cargo door open or closed status, if the down-sequence switch of the cargo door is operating correctly. All three conditions (*i.e.*, door closed, latched, and locked) must be monitored directly so that the door indication system cannot display either ''latched'' before the door is closed or ''locked'' before the door is latched. If a sequencing error caused the door to latch and lock without being fully closed, the subject indication system, as designed, would not alert the door operator or the flight engineer of this condition. As a result, the airplane could be dispatched with the main deck cargo door unsecured, which could lead to the cargo door opening while the airplane is in flight and possible loss of the airplane.

The light on the flight engineer's panel is labeled ''MAIN CARGO'' and is displayed in red since it indicates an event that requires immediate pilot action. However, if the flight engineer is temporarily away from his station, a door unsafe warning indication could be missed by the pilots. In addition, the flight engineer could miss such an indication by not scanning the panel. As a result, the pilots and flight engineer could be unaware of, or misinterpret, an unsafe condition and could fail to respond in the correct manner.

Therefore, an indicator light must be located in front of and in plain view of both pilots since one of the pilot's stations is always occupied during flight operations.

The main deck cargo door indication system of STCs SA1767SO and SA1768SO does not have a level of reliability that is considered adequate for safe operation. Many components are exposed to the environment during cargo loading operations and may be contaminated by precipitation, dirt, and grease, or damaged by foreign objects or cargo loading equipment. As a result, wires, switches, and relays can fail, jam, or short circuit and cause a loss of indication or a false indication to the door operator and flight crew. The design logic of the indication system (*i.e.,* lights which extinguish when the door is locked) will, in the event of a single point failure that would extinguish the light, result in an erroneous ''safe'' indication regardless of actual door status.

The design of STCs SA1767SO and SA1768S0 has a ''Press-to-Test'' red warning light on the control panel of the main deck cargo door located near the L–1 door. The design of the monitoring system of the main deck cargo door does not include separate lights to provide the door operator with door close, latch, and lock status. The electrical wiring design of the close, latch, and lock sensors of the door monitoring system are wired in parallel instead of in series. In parallel, two sensors could be sensing ''unsafe'' and the third sensor could be sensing ''safe.'' If this situation were to occur, the sensors would not illuminate the red warning light on the door control panel or at the flight engineer's panel. Therefore, the ''Press-to-Test'' feature is adequate to check the light bulb functionality, but is not adequate to check the cargo door closed, latched, and locked functions and status without annunciator lights for those three functions.

2. Means To Visually Inspect the Locking Mechanism

The single view port of the main deck cargo door installed in accordance with STC SA1767SO is intended to allow the flight crew to conduct a visual inspection of the door locking mechanism. This view port is used in conjunction with the door warning system and should provide a suitable ''back-up'' in the event that the main deck cargo door warning system malfunctions.

The door locking mechanism is an assembly comprised of multiple lock pins (one for each of the door latches) connected by linkages to a common lock shaft. Although an indicator flag attached to the lock shaft can be seen through the view port when the shaft is in the ''locked'' position, a failure between the shaft and the pins could go undetected, because this flag is attached to the lock shaft and not the actual lock pins. If such a failure goes undetected, the airplane may be dispatched with the main deck cargo door warning system inoperative and the door not fully closed, latched, and locked, which could lead to a main deck cargo door opening while the airplane is in flight and possible loss of the airplane. Therefore, the FAA finds that the subject view port is not a suitable back-up when the cargo door warning system malfunctions.

As discussed in the ATA Final Report and the FAA Memorandum, there must be a means of directly inspecting each lock or, at a minimum, the locks at each end of the lock shaft of certain designs, such that a failure condition in the lock shaft would be detectable.

3. Means to Prevent Pressurization to an Unsafe Level

Boeing 727–100 and –200 airplanes modified in accordance with STC SA1767SO are configured to utilize the existing fuselage pressurization outflow valve for the purpose of preventing pressurization of the airplane to an unsafe level in the event that the main deck cargo door is not closed, latched, and locked. The FAA design review of these modified Boeing 727–100 and –200 airplanes (documented in the Design Review Report) identified single point failures in the door control/outflow valve interface that could result in the valve not sensing and responding to an unsafe door condition. In addition, the FAA found no data to substantiate that the outflow valve location and size could prevent pressurization to an unsafe level.

With the current design, it is possible that the outflow valve or associated controllers may not perform their intended function when utilized for the purpose of preventing pressurization of the airplane in the event of an unsecured door. This condition could result in cabin pressurization forcing an unsecured door open while the airplane is in flight and possible loss of the airplane.

4. Powered Lock Systems

The main deck cargo door control system for STC SA1767SO that utilizes electrical interlock switches is designed to remove door control power (electrical and hydraulic) prior to flight and to prevent inadvertent door openings. The occurrence of an in-flight door opening event on airplanes modified in accordance with STC SA1767SO, as identified in the Design Review Report, indicates the likelihood that there may be latent and/or single point failures that can restore or continue to allow power to the door controls and cause inadvertent door openings. The failure modes may be found in the electrical portion of the door control panel, which, in turn, activates the door control hydraulics. The potential for the occurrence of these failure conditions is increased by the harsh operating environment of freighter airplanes. Door system components are routinely exposed to precipitation, dirt, grease, and foreign object intrusion, all of which increase the likelihood of damage. As a result, wires, switches, and relays have a greater potential to fail or short circuit in such a way as to allow the cargo door to be powered open without an operator's command and regardless of electrical interlock positions.

A systems safety analysis would normally evaluate and resolve the potential for these types of unsafe conditions. However, the design data for STC SA1767SO do not include a systems safety analysis to specifically identify these failure modes and do not show that an inadvertent opening is extremely improbable. The need for a system safety analysis is identified in the ATA Final Report and the FAA Memorandum.

Cargo Restraint Barrier

In order to ensure the safety of occupants during emergency landing conditions, the FAA first established in 1934, a set of inertia load factors used to design the structure for restraining items of mass in the fuselage. Because the airplane landing speeds have increased over the years as the fleet has transitioned from propeller to jet design, inertia load factors were changed as specified in CAR § 4b.260. Experience has shown that an airplane designed to this regulation has a reasonable probability of protecting its occupants from serious injury in an emergency landing. The 727 passenger airplane was designed to these criteria which specified an ultimate inertia load requirement of 9g in the forward direction. These criteria were applied to the seats and structure restraining the occupants, including the flight crew, as well as other items of mass in the fuselage.

When the 727 passenger airplane is converted to carry cargo on the main deck, a cargo barrier is required, since most cargo containers and the container-to-floor attaching devices are not

designed to withstand emergency landing loads. In fact, the FAA estimates that the container-to-floor attaching devices will only support approximately 1.5g's to 3g's in the forward direction. Without a 9g cargo barrier, it is probable that the loads associated with an emergency landing would cause the cargo to be unrestrained and impact the occupants of the airplane, which could result in serious injury or death.

The structural inadequacy of the cargo barrier was evident to the FAA during its review in October 1997 of a Boeing 727 modified in accordance with STC SA1767SO. The observations revealed that the design of the net restraint barrier floor attachment and circumferential supporting structure does not provide adequate strength to withstand the 9g forward inertia load generated by the main deck cargo mass, nor does it provide a load path to effectively transfer the loads from the restraint barrier to the fuselage structure of the airplane. These observations are supported by data contained in ''ER 2785, Structural Substantiation of the 50k 9g Bulkhead Restraint System in Support of STC SA1543SO PN 53–1292–401 for the 9g Bulkhead 53–1980–300 Assembly with Upper Attachment Structure, Lower Attachment Structure, Floor Shear Web Structure, Seat Track Splice Fittings, Seat Tracks, and Seat Track Splices,'' dated September 29, 1996, by M. F. Daniel. Although this report was specific to STC SA1543SO, the FAA has determined that the data are applicable to airplanes modified in accordance with STC SA1767SO because the design principles for attachment of the barriers in both STCs are the same. The report reveals that structural deficiencies were found in the net attach plates and floor attachment structure of the cargo barrier. The data show large negative margins of safety, which indicate that the inertia load capability of the cargo barrier is closer to 2g than the required 9g in the forward direction. From these analyses, it is evident that the cargo restraint barrier would not be capable of preventing serious injury to the occupants during an emergency landing event with the full allowable cargo load.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The FAA has received comments in response to the four NPRM actions (*i.e.,* Rules Dockets 97–NM–232–AD, 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD) that address the same subjects described above for four different sets of cargo modification STCs. Some of these comments addressed only one NPRM, while others addressed all four. Because in most cases the issues raised by the commenters are generally relevant to all four NPRMs, each final rule includes a discussion of all comments received.

Definition of Detailed Visual Inspection

One commenter provided Boeing's definition of a detailed visual inspection. The commenter requests that the FAA approve Boeing's definition as meeting the ''detailed visual inspection'' definition specified in Note 2 of the NPRM. The commenter states that it has incorporated Boeing's definition into its General Maintenance Manual (GMM), and that it is performing the detailed visual inspection of the main deck cargo door hinge in accordance with the GMM. The commenter also states that acceptance of the existing Boeing's definition will allow for work standardization and consistency.

The FAA partially concurs. The FAA concurs that, for the purpose of this AD, the definition provided by the commenter satisfies the intent of the definition contained in Note 2 of this AD. The detailed inspection definition specified in Note 2 of this AD is a standard definition that is used in all ADs that require a detailed inspection. Therefore, the FAA finds that no change to Note 2 of the final rule is necessary. However, for clarification purposes, the FAA has revised all references to a ''detailed visual inspection'' in the NPRM to ''detailed inspection'' in the final rule.

Main Deck Cargo Door Hinge

Two commenters request that the compliance time for accomplishing the detailed visual inspection required by paragraph (a) of the NPRM be revised. One commenter states that the compliance time should include a threshold of ''prior to the accumulation of five years since accomplishment of the original conversion.'' The commenter states that operators of newly modified airplanes should not have to accomplish the detailed visual inspection required by paragraph (a) of the NPRM because it would be unlikely that brand new hinges would develop cracks within 250 flight cycles after being installed. The other commenter states that the compliance time should be revised to ''at the next scheduled 'B' check, or 350 cycles after the effective date of the NPRM, whichever occurs first.'' The commenter states that such an extension would allow the inspection to be accomplished during a regularly scheduled ''B'' check and would not be disruptive of normal maintenance inspection scheduling.

The FAA partially concurs. The FAA does not concur that the compliance time should be extended from 250 flight cycles to 350 flight cycles. In developing an appropriate compliance time for the detailed inspection required by paragraph (a) of this AD, the FAA considered the degree of urgency associated with addressing the subject unsafe condition; the results from an FAA report, ''Damage Tolerance Analysis of 727 Cargo Door Hinge,'' dated October 10, 1997; and the practical aspect of accomplishing the required inspection within an interval of time that parallels the typical ''A'' check scheduled maintenance interval for the majority of affected operators.

However, the FAA concurs with the commenter about the unlikelihood of a newly modified airplane developing cracks within 250 flight cycles since installation. Based on the referenced FAA damage tolerance report, the FAA finds that it is unlikely that a significant crack would occur in the hinge within 4,000 flight cycles since installation. Therefore, the FAA finds that operators must accomplish the detailed inspection ''prior to accumulation of 4,000 flight cycles since accomplishment of the installation of the main deck cargo door, or within 250 flight cycles after the effective date of this AD, whichever occurs later.'' The FAA has revised paragraph (a) of the final rule accordingly.

One commenter requests that a high frequency eddy current (HFEC) inspection be required in paragraph (a) of the NPRM in lieu of the detailed visual inspection. The commenter states that an HFEC inspection should be used because there are no proposed repetitive inspections and a detailed visual inspection can only detect limited crack size.

The FAA does not concur. The FAA finds that accomplishment of the detailed inspection required by paragraph (a) of this AD, in conjunction with the detailed inspection required by paragraph (b)(1) of this AD and the modification required by paragraph (b)(2) of this AD, will ensure the integrity of the door and fuselage structure to which the hinge is attached. Therefore, no change to the final rule is necessary in this regard.

Two commenters request that the FAA revise paragraph (a) of the NPRM to specify that operators will be given ''credit'' for having previously accomplished the proposed detailed visual inspection of the main deck cargo

door hinge in accordance with a method approved by the appropriate Aircraft Certification Office (ACO) prior to the effective date of the final rule. One commenter states that operators who accomplished the subject inspection before the effective date of this AD should not be penalized by being forced to reinspect after the effective date of this AD.

The FAA does not consider that a change to the final rule is necessary to give operators such credit. Operators are given credit for work previously performed by means of the phrase in the ''Compliance'' section of the AD that states, ''Required as indicated, unless accomplished previously.'' Therefore, in the case of this AD, if the required detailed inspection has been accomplished prior to the effective date of this AD in accordance with a method approved by the FAA, this AD does not require that it be repeated.

One commenter requests that the detailed visual inspection required by paragraph (b)(1) of the NPRM be accomplished at the next ''C'' check after five years have elapsed since the airplane was converted from a passenger- to a cargo-carrying (''freighter'') configuration. The commenter also states that a ''C'' check would allow operators to accomplish the inspection during a heavy maintenance visit.

The FAA does not concur. The FAA finds that accomplishment of the detailed inspection required by paragraph (b)(1) of this AD prior to or concurrently with requirements of paragraph (b)(2) of this AD (*i.e.,* installation of a main deck cargo door hinge) will ensure the structural integrity of mating surfaces of the hinge. However, paragraph (g) of this AD does provide affected operators the opportunity to apply for an adjustment of the compliance time if data are presented to justify such an adjustment.

One commenter requests that the detailed visual inspection required by paragraph (b)(1) of the NPRM apply only to airplanes that have been in service for five or more years since installation of the cargo door, because the likelihood of damage increases with time in service. The commenter states that the compliance time specified in paragraph (b) of the NPRM should start from the date that the modification was installed on the airplane.

The FAA does not concur. The FAA finds that the potential for cracks in the hinge is primarily related to flight cycles (*i.e.,* number of fuselage pressure cycles) and, to a lesser extent, calendar time. Therefore, the FAA has determined that the compliance time specified in paragraph (b) of this AD should be related to flight cycles, not calendar time. No change to the final rule is necessary in this regard.

One commenter requests that the NPRM, Rules Docket 97–NM–234–AD, be revised to reference Kitty Hawk Service Bulletin KHA 727–004, Revision A, as an appropriate source of service information for accomplishing the detailed visual inspection required by paragraphs (a) and (b)(1) of the NPRM and the modification required by paragraph (b)(2) of that NPRM. The commenter states that this service bulletin has been submitted to the FAA for approval and should be approved by the FAA prior to the issuance of the NPRM.

Another commenter states that it has developed and submitted to the FAA for approval a modification that segments the hinge on existing cargo converted airplanes and installs a segmented hinge on the new conversion. From this comment, the FAA infers that the commenter is requesting that the NPRM, Rules Docket 97–NM–233–AD, be revised to reference this modification as a terminating action for the requirements of paragraphs (b) and (c) of that NPRM.

The FAA concurs with the commenters' requests to reference service bulletins that constitute compliance with the requirements of paragraphs (b) and (c) of ADs, Rules Dockets 97–NM–233–AD and 97–NM–234–AD. The FAA has reviewed and approved Kitty Hawk Service Bulletin KHA 727–004, Revision B, dated March 3, 1999, as opposed to the Revision A mentioned by one of the commenters. The FAA also has reviewed and approved Aeronautical Engineers Incorporated (AEI) Service Bulletin AEI01–01, Revision B, dated October 26, 2001. These service bulletins describe the following procedures:

1. Visual inspection of all areas of the hinge for cracks or other signs of damage;
2. Inspection of the mating surfaces of the main deck cargo door hinge and the external doubler for discrepancies (*i.e.,* scratches, gouges, or corrosion);
3. Repair of any crack, damage, or discrepancy, if necessary; and
4. Installation of a main deck cargo door hinge that complies with the applicable requirements of CAR part 4b, including fail-safe requirements.

In addition, the FAA has reviewed and approved Federal Express E.O. Revision Record 7–5230–7–5000, Revision B, release date December 18, 2001, and Pemco Service Bulletin 727–53–0006, Revision 1, dated December 4, 2001. The procedures in these service bulletins are similar to those described in AEI Service Bulletin AEI01–01, Revision B, and Kitty Hawk Service Bulletin KHA 727–004, Revision B.

The FAA finds that accomplishment of the actions specified in the four service bulletins described previously constitutes compliance with the requirements of paragraphs (b) and (c) of final rules, Rules Dockets 97–NM–232–AD, 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD; as applicable. Therefore, the FAA has revised those final rules to include a new note that references the subject service bulletins as a source of service information for accomplishing the actions required by paragraphs (b) and (c) of those final rules; as applicable.

One commenter requests that a subparagraph be added to paragraph (b) of the NPRM to require that the detailed visual inspection required by paragraph (b)(1) of the NPRM be accomplished just prior to final hinge installation during the process of converting an airplane from a passenger- to cargo-carrying (''freighter'') configuration. The commenter states that this revision would eliminate its concerns about the installation defects that could cause future problems.

The FAA does not concur. The FAA finds that any FAA-approved corrective action that satisfies the requirements of paragraph (b)(2) of this AD will also address the installation of a hinge during the process of converting a Boeing Model 727 series airplane from a passenger- to a cargo-carrying (''freighter'') configuration. Normally, good manufacturing procedures during production should preclude the necessity for the inspection. No change to the final rule is necessary in this regard.

One commenter notes that paragraph (b)(2) of the NPRM references CAR part 4b. The commenter asks, ''If the FAA, as evidenced by the awarding of an STC, certified the cargo door hinge, how can the current hinge not meet CAR requirements?'' The commenter also asks, ''Wasn't the original STC determined to be in compliance with those requirements? If so, what specifically needs to be done to eliminate the FAA safety concerns about hinges that do not appear to have a problem?'' The commenter suggests that paragraph (b)(2) of the NPRM be revised to require STC holders to design and make available an acceptable replacement hinge. The commenter states that this suggestion should be a condition for STC holders to continue to hold their STC approval.

From the commenter's questions, the FAA infers that the commenter believes

a main deck cargo door hinge with an approved STC is compliant with the requirements of CAR part 4b. The FAA finds that clarification is necessary. Generally, there is a presumption by operators that demonstrations of compliance with the requirements of CAR part 4b is a prerequisite for granting an STC. However, the applicant for any design approval is responsible for compliance with all applicable FAA regulations. The FAA has the discretion to review or otherwise evaluate the applicant's compliance to the degree the FAA considers appropriate in the interest of safety. The normal certification process allows for the review and approval of data by FAA designees. Consequently, the FAA office responsible for the certification of an airplane or modification to an airplane or an aeronautical appliance may not review all details regarding compliance with the appropriate regulations. As explained in the NPRM, the FAA has conducted design reviews and airplane inspections and has identified a potential unsafe condition that relates to the main deck cargo door hinge.

In addition, the FAA does not concur with the commenter's request to revise paragraph (b)(2) of the AD to require STC holders to design and make available an acceptable replacement hinge. The FAA finds that such a requirement is unnecessary, because as previously discussed, the FAA has revised this final rule to include a new note that references the applicable STC holder's service bulletin as a source of service information for accomplishing the actions required by paragraphs (b) and (c) of this final rule.

Main Deck Cargo Door Systems

One commenter requests that the compliance time for accomplishing the Airplane Flight Manual (AFM) revisions required by paragraph (d) of the NPRM be revised from ''within 60 days after the effective date of this AD'' to ''within 60 days after submission of the procedures to the FAA.'' The commenter states that operators should be able to design revisions to the AFM within the proposed 60 days. However, the commenter believes that the Atlanta ACO will not be able to approve every one of those AFM Supplements within that time period.

The FAA does not concur. Since the release of the NPRM, some of the affected STC holders and operators have already developed AFM procedures acceptable to the FAA. The FAA finds that a 60-day compliance time is sufficient to allow the remaining operators and STC holders to develop revisions to the applicable AFMs and their supplements and for the Atlanta ACO to review and approve those AFM revisions.

One commenter submitted procedures for accomplishing the requirements of paragraph (d) of NPRM, Rules Docket 97–NM–232–AD. The commenter requests that the FAA approve those procedures prior to issuance of the final rule and include those procedures in the final rule. The commenter states that it has completed a Safety Assessment Report for each of the door configurations currently operating in its fleet. The commenter believes the results of the report demonstrate that it is ''extremely improbable'' that the door will inadvertently open in flight for any reason. Although the analysis does not demonstrate compliance with the ''extremely improbable'' standard, the commenter states that for a limited time of 36 months the door system, as installed, provides a sufficient level of safety to be considered acceptable with no modification or change in operational procedures.

The FAA partially concurs. In order to gain a better understanding of the referenced Safety Assessment Report, the FAA had a telecon with the commenter on February 19, 2000, to discuss a series of questions, which were provided to the commenter prior to the telecon, about the report. (The minutes of this telecon are included in Rules Docket 97–NM–232–AD.) In addition to the information that it provided at the telecon, the commenter also provided an analysis of the Safety Assessment Report in a letter, dated February 16, 2000, and a revised table of the Safety Assessment Report in a letter, dated March 6, 2000. The analysis in these letters provided, for a variety of failure modes, the probability of the main deck cargo door not being in the closed, latched, and locked condition prior to dispatch. The analysis showed that the warning systems of the main deck cargo door and the means to prevent pressurization if the door is not closed, latched, and locked, only meet some of the requirements of CAR § 4b.606 and criteria specified in FAA memorandum, dated March 20, 1992 (referenced in the preamble of the NPRM). The commenter also provided Revision 16 of its Boeing B–727 Flight Manual, which further clarifies a change in the procedures for verifying that the main deck cargo door is closed, latched, and locked.

In light of the clarification provided by the commenter, the FAA concurs that the procedures submitted by the commenter provide an adequate level of safety until the requirements of paragraph (e) of this AD have been accomplished, considering the level of probability of occurrence of certain failures of the warning systems of the main deck cargo door and strict adherence to the door checking procedures and associated training requirements. Since issuance of the NPRM, the FAA has reviewed and approved Federal Express Service Bulletin FX727–2001–5230–01, dated July 30, 2001, which describes procedures for ensuring that the main deck cargo door is closed, latched, and locked prior to dispatch. Accomplishment of these actions constitutes compliance with the requirements of paragraph (d) of final rule, Rules Docket 97–NM–232–AD. Therefore, the FAA has revised the final rule, Rules Docket 97–NM–232–AD, to include a new note that references the subject service bulletin as a source of service information for accomplishing the actions required by paragraph (d) of that final rule.

One commenter provided procedures for accomplishing the requirements of paragraph (d) of NPRM, Rules Docket 97–NM–233–AD, on airplanes modified in accordance with STC SA1368SO, on which a vent door has not been installed, and on airplanes modified in accordance with STC SA1797SO, on which a vent door has been installed. The commenter states that its procedures will ensure that the main deck cargo door is properly closed, latched, and locked prior to flight.

From this comment, the FAA infers that the commenter is requesting that the FAA approve its procedures as an acceptable means of compliance to the requirements of paragraph (d) of the final rule, Rules Docket 97–NM–233–AD. The FAA does not concur. The FAA finds that any proposed operating procedure must have sufficient validation and verification that the procedures are realistic and designed to minimize possible human error. The procedure also must provide for adequate checks and balances in the event the procedure is not strictly followed. In addition, the commenter did not provide any validation of the operating procedure or results of a safety analysis. However, the FAA may approve requests for an alternative method of compliance (AMOC) under the provisions of paragraph (g) of AD, Rules Docket 97–NM–233–AD, if sufficient data are submitted to substantiate that such a operating procedure would provide an acceptable level of safety.

One commenter provided procedures for accomplishing the requirements of paragraph (d) of NPRM, Rules Docket 99–NM–234–AD. In support of its

procedures, the commenter states, among other items, that an internal direct visual inspection of the latching and locking system is not possible on Model 727 series airplanes affected by that NPRM because the latching and locking systems are covered by a protective guard/cover that prevents direct viewing of these systems. Removing these covers would expose the latching and locking systems to possible foreign object damage (FOD) or damage from shifting freight. The commenter states that this condition is far more dangerous than a failure of the latching and locking systems. The commenter also states that most of the affected airplanes are equipped with flip up sill protectors, which further block the visibility of the bottom of the cargo door area (latch and lock area). The commenter concludes that a visual inspection of the latching and locking mechanisms is not appropriate for the airplane type and would create severe operational disruption with no benefit.

The FAA concurs with the commenter's conclusion that a visual inspection of the latching and locking mechanisms is not appropriate for accomplishing the requirements of paragraph (d) of final rule, Rules Docket 97–NM–234–AD. The FAA notes that paragraph (d) of that final rule does not specifically require a visual inspection of the locking mechanisms of the main deck cargo door after the door is closed, as suggested by the commenter. Since issuance of the NPRM, the FAA has reviewed and approved Kitty Hawk Service Bulletin KHA 727–008, dated January 7, 2000, which describes procedures for ensuring that the main deck cargo door is closed, latched, and locked prior to dispatch. These procedures are identical to those procedures provided by the commenter. Accomplishment of these actions constitutes compliance with the requirements of paragraph (d) of final rule, Rules Docket 97–NM–234–AD. Therefore, the FAA has revised final rule, Rules Docket 97–NM–234–AD, to include a new note to reference the subject service bulletin as a source of service information for accomplishing the actions required by paragraph (d) of that final rule.

One commenter states that the requirements for ''a means to prevent pressurization to an unsafe level'' and ''direct visual examination of all locks'' are not included in the certification basis of Model 727 series airplanes and should not be required for the interim action.

From this comment, the FAA infers that the commenter is referring to the interim actions required by paragraph (d) of the NPRM and to extracts from Appendix 1 of this AD, which sets forth the industry-accepted criteria to which the outward opening doors must be shown to comply per paragraph (e) of the NPRM. The FAA does not concur. The commenter has misinterpreted the requirements of paragraph (d) of this AD. Paragraph (d) of this AD requires procedures to ensure that all power is removed from the main deck cargo door prior to dispatch and to ensure that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane. This paragraph does not specify or limit what means or actions would be acceptable to the FAA. Operators could submit a means to prevent pressurization to an unsafe level and direct visual inspection of the locks as possible ways to ensure that the main deck cargo door is secure, in accordance with paragraph (d) of this AD. In addition, to comply with paragraph (e) of this AD, the criteria specified in Appendix 1 of this AD must be applied, irrespective of the certification basis of the airplane. Therefore, no change to the final rule is necessary in this regard.

One commenter requests that the proposed compliance time specified in paragraph (e) of the NPRM be revised from ''within 36 months after the effective date of this AD'' to ''at the next 'C' check after the modifications are approved by the Manager, Atlanta ACO.'' The commenter states that such a compliance time would make everybody (*i.e.*, designer, operator, and FAA) share responsibility for time delays encountered during the modification design and approval process.

The FAA does not concur. Since issuance of the NPRM, the FAA has reviewed and approved two modifications (*i.e.*, National Aircraft Service, Inc. (NASI), STC ST01438CH and Pemco STC ST01270CH) as acceptable means for compliance with the requirements of paragraph (e) of final rules, Rules Dockets 97–NM–232–AD and 97–NM–235–AD; as applicable. Therefore, the FAA has revised the final rules, Rules Dockets 97–NM–232–AD and 97–NM–235–AD, to include a new note to reference the applicable STC as a source of service information for accomplishing the requirements of paragraph (e) of those final rules. The FAA finds that a 36-month compliance time for accomplishing the action specified in paragraph (e) of those final rules is not only sufficient for the design of the corrective actions, but also provides adequate time for operators to schedule the installation within an interval of time that parallels a heavy maintenance visit. However, under the provisions of paragraph (g) of final rules, Rules Dockets 97–NM–232–AD and 97–NM–235–AD, the FAA may approve requests for an adjustment of compliance times if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Main Deck Cargo Barrier

One commenter requests that, before issuance of the final rule, industry and the FAA form a review team to find a way of lowering the costs associated with accomplishing the proposed installation of a 9g crash barrier. The commenter suggests that lower costs could be achieved by fixing the existing barrier (*e.g.*, the loads could be spread by the addition of structural reinforcement attachment angles) or designing a new barrier. The commenter states that the Ventura Aerospace, Inc., cargo barrier STC ST00848LA, which is an approved means of compliance with the requirements of paragraph (f) of NPRMs, Rules Dockets 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD, is an adequate barrier; however, the parts and installation cost estimates for the installation in those NPRMs are too low. The commenter gave examples of various actions and associated work hours that would be necessary to accomplish the proposed installation of the Ventura 9g crash barrier.

The FAA does not concur with the commenter that a review team is necessary, and that the cost estimates of NPRM's, Rules Dockets 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD, for accomplishing the installation of a main deck cargo barrier are too low. The FAA acknowledges that installation of a Ventura Aerospace, Inc., cargo barrier STC ST00848LA is an approved means of compliance with the requirements of paragraph (f) of final rules, Rules Dockets 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD. However, the cost estimates in the subject NPRMs were not specifically for installation of the subject Ventura 9g crash barrier, but were for installation of a 9g crash barrier that complies with the applicable requirements of CAR part 4b. The installation cost estimate of the NPRMs was provided to the FAA by Pemco based on the best data available to date.

The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur ''incidental'' costs in addition to the ''direct'' costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up; planning time; or time necessitated

by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. Furthermore, because the FAA generally attempts to impose compliance times that coincide with operators' scheduled maintenance, the FAA considers it inappropriate to attribute the costs associated with aircraft ''downtime'' to the cost of the AD, because, normally, compliance with the AD will not necessitate any additional downtime beyond that of a regularly scheduled maintenance visit.

Public Meeting

Several commenters request that the FAA hold a public meeting prior to the issuance of the final rule in the event that the FAA does not find their procedures acceptable for compliance with the requirements of paragraph (d) of the NPRM. The commenters state that such a meeting would provide a forum for productive face-to-face discussions similar to the process used by industry's B–727 Working Group.

The FAA does not concur. As discussed previously, the FAA has accepted some of the procedures submitted by the commenters. Also, in consideration of the differing configurations of the main deck cargo door systems between the various affected STCs, a public meeting to discuss the AD may be significantly restricted in some cases because of the proprietary design and data issues. However, the FAA is available to discuss any particular proposal for procedures specific to the airplane configuration with each of the affected STC holders or operators. Further, the FAA may approve requests for an AMOC under the provisions of paragraph (g) of this AD if sufficient data are submitted to substantiate that such a procedure would provide an acceptable level of safety. Therefore, the FAA finds that no public meeting is necessary.

Issue Separate ADs

One commenter requests that the NPRM be split into separate ADs for each issue—main deck cargo door hinge, main deck cargo door systems, and 9g crash barrier. The commenter states that multiple actions addressed by a single AD make managing the actions very unwieldy and complicated.

The FAA does not concur. The FAA is not convinced that separate ADs for each issue would resolve the complexity of this AD. The FAA has determined that a less burdensome approach is to issue only one AD for each STC holder that addresses the potential unsafe conditions that relate to the main deck cargo door hinge, main deck cargo door systems, and main deck cargo barrier. In addition, operators have already initiated actions to accomplish the requirements of this AD without apparent complications.

ACO Approval

One commenter requests that the actions required by the NPRM that must be accomplished in accordance with a method approved by the Manager, Atlanta ACO, be approved by the Manager, Transport Airplane Directorate. The commenter states that the affected Boeing Model 727 series airplanes are not small airplanes, and that the approving authority should be someone in an ACO from the Transport Airplane Directorate who understands structural repairs of transport category airplanes.

The FAA does not concur. Since the subject STCs were issued by the Atlanta ACO, that office has certificate responsibility for the airplanes affected by this AD. The Atlanta ACO is most cognizant of the design details of the subject STCs and, therefore, is more able to address each operator's specific issues for complying with paragraph (d) of this AD. The Manager of the Atlanta ACO will coordinate the review of the submittals with the Transport Airplane Directorate, which has established a team consisting of members from several ACOs to review all requests in accordance with paragraphs (b)(1), (b)(2), (c), (d), (e), and (f) of this AD.

Principal Maintenance Inspector (PMI) or Principal Operations Inspector (POI) Approval

One commenter requests that the FAA allow the individual operator's local PMI or POI to approve the AFM procedures for ensuring that the main deck cargo door is closed, latched, and locked required by the NPRM, or provide an option in the NPRM that allows the procedures to be added to the airplane operator manual (AOM), if applicable. The commenter states that such approval would ensure that the approval process is accomplished quickly.

The FAA does not concur. Paragraph (d) of this AD requires comprehensive engineering evaluation in consideration of the applicable requirements of CAR part 4b and the criteria specified in Appendix 1 of this AD. Consequently, the evaluation must be conducted by the Manager, Atlanta ACO, to determine an acceptable level of safety. The PMI or POI for the air carrier is normally not familiar with all the design considerations provided by the requirements of CAR part 4b and Appendix 1 of this AD.

Cost

One commenter requests that an industry/FAA team determine a less costly method to fix the existing barriers to satisfy the FAA's concerns. For example, the loads could be spread by the addition of structural reinforcement attachment angles. The commenter states that replacing the barrier is an extreme measure, and that there must be some kind of structural additions that could be made to the existing barrier to make it acceptable at a much lower cost.

The FAA partially concurs. The STC holders and operators are certainly free to form an industry team to find common solutions. However, the FAA's reason for participation would not be for the purpose of developing a less costly design, but rather to ensure that the final design is compliant with the applicable regulations.

One commenter requests that the FAA require STC holders to design the correction for the NPRM as a warranty issue. The commenter states that small operators, who do not have in-house engineering capability, will be at a great disadvantage when attempting to design remedies for this NPRM. The commenter also states that this NPRM places a substantial financial and operational burden on ''small entities'' just from the standpoint of not having a remedy already designed and approved.

The FAA does not concur. Any warranty agreements between the operator and an STC holder are not the responsibility of the FAA. The burden on small entities is addressed in the Regulatory Evaluation Summary and Regulatory Flexibility Analysis Section of this AD.

Descriptive Language of Preamble

One commenter states that it found the following four factual inaccuracies in the NPRM, Rules Docket 97–NM–232–AD, and requests that the FAA correct them.

1. The commenter notes that paragraph six under the heading ''Main Deck Cargo Door System'' reads, '' * * * However, the FAA is aware of two events in which the main deck cargo door opened during flight. These events occurred on FedEx passenger/freighter conversion STC's in October 1996, and March 1995.'' The commenter states that it does not have any information or records indicating that the main deck cargo door opened in flight in October 1996 or March 1995. In the March 1995 incident, the commenter contends that the door,

upon landing, was found to be closed and locked, and that the lock bar was found to be in the unlocked position. The commenter states that it found a control valve electrical connection of the main deck cargo door to be disconnected, and that the door operated normally once it was reconnected.

2. The commenter disagrees with the sentence under the heading ''1. Indication System'' in the preamble of the NPRM that reads, ''Both of these lights indicate the status of the cargo door latch and lock positions, but do not indicate either the door open or closed status.'' The commenter states that its system does monitor and indicate the door closed status. If the door closed switch is not depressed, the light will stay illuminated, even if the door lock latches have rolled and the lock bar has moved into place.

3. The commenter notes that paragraph two under the heading ''2. Means to Visually Inspect the Locking Mechanism'' reads, ''* * * Although an indicator flag attached to the lock shaft can be seen through the view port when the shaft is in the 'locked' position, a failure between the shaft and the pins could go undetected, because this flag is attached to the lock shaft and not the actual lock pins.''

The commenter states that the flag is attached to the lock bar on Model 727–100 series airplanes. The lock plates are also bolted directly to the lock bar (no linkages). Therefore, the commenter contends that both the flag and lock plates become integrated parts of the lock bar.

In addition, the commenter states that the flag is attached to a lock pin on Model 727–200 series airplanes, and that the lock pin linkage does not have springs or an actuator attached to it. The commenter also contends that movement would have to be transmitted through the lock bar. The commenter further states that the stress analysis for Model 727–200 series airplanes shows high margins of safety in yield, bending, and shear for the locking hinges and fasteners.

4. The commenter notes that paragraph three under the heading ''3. Means to Prevent Pressurization to an Unsafe Level'' in the preamble of the NPRM reads, ''Boeing 727–100 airplanes modified in accordance with the subject STC's have no means of preventing pressurization in the event that the main deck cargo door is not closed, latched, and locked, and therefore, have a higher risk of a cargo door opening while the airplane is in flight and possible loss of the airplane.'' The commenter states that the system used on Model 727–100 series airplanes has a relay that drives the ground venturi system, which in turns opens the outflow valve when the main deck cargo door is not closed and locked, hence pressurization is not possible.

For item 1 above, the FAA partially agrees with the commenter. In the preamble of the NPRM, the FAA incorrectly referenced October 1996 as a date of a door opening event. The correct date is December 9, 1994. The pilots' report (which is included in Rules Docket 97–NM–232–AD) on this event states that shortly after takeoff the warning light for the main deck cargo door illuminated. Following the open in-flight procedures for the main deck cargo door, the flight crew safely returned the airplane to the departure airport. The post-flight inspection revealed that the main deck cargo door opened approximately two feet. Also, in reference to the March event where the commenter states that the door did not open in flight, a verbal report (i.e., ''FAA Freighter Conversion STC Review Report Number 2, dated October 16–18, 1996,'' which is included in Rules Docket 97–NM–232–AD) from the organization of the commenter's company states that the main deck cargo door was unlocked, and that the door was flush with the exterior of the airplane. The report on this latter event states that, following departure and at 17,000 feet, the warning light of the main deck cargo door came on followed by cabin altitude climbing. While it is not clear to the FAA whether or not the main deck cargo door opened while the airplane was in flight, the condition for possible door opening (*i.e.,* rotation of the lock bar to the unlocked position inflight) did occur, which could have led to a door opening while the airplane is in flight. Therefore, the FAA has revised the ''Background'' (''Main Deck Cargo Door Systems'' subsection) Section in the preamble of final rule, Rules Docket 97–NM–232–AD, to correct the date of the subject event.

For items 2. and 4. above, the FAA agrees with the commenter's correction to items 2. and 4. above and has revised the ''Background'' Section (''Indication System'' and ''Means to Prevent Pressurization to an Unsafe Level'' subsections) in the preamble of final rule, Rules Docket 97–NM–232–AD, accordingly. However, we find that the correction to item 2. does not alleviate the unsafe design features that were single point failures in the door control/outflow valve interface, which could result in the valve not sensing and responding to an unsafe door condition. With the current design, it is possible that the outflow valve or associated controllers may not perform their intended function when utilized for the purpose of preventing pressurization of the airplane in the event of an unsecured door. This condition could result in cabin pressurization forcing an unsecured door open while the airplane is in flight and possible loss of the airplane.

Further, we find that the correction to item 4. does not alleviate the safety concern regarding the design feature where ALL three conditions (i.e., door closed, latched, and locked) are not directly monitored. If a sequencing error caused the door to latch and lock without being fully closed, the subject indication system, as designed, would not directly alert the door operator or the flight engineer of this condition. As a result, the airplane could be dispatched with an unsecured main deck cargo door, which could lead to the cargo door opening while the airplane is in flight and possible loss of the airplane.

For item 3. above, the FAA does not concur that the attachment of the ''flag'' to the lock bar on Model 727–100 series airplanes is sufficient to indicate the position of the lock pins, even though the lock pins are bolted to the lock bar. The FAA has determined that any failure condition of a lock pin would not be detected when observing the position of the flag through the view port.

Explanation of Change to Unsafe Condition

To more accurately reflect the identified unsafe condition of this AD, the FAA has revised the final rule where applicable to read, ''to prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight and consequent rapid decompression of the airplane, including possible loss of flight control or severe structural damage; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants.''

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Regulatory Evaluation Summary

This analysis estimates the costs of AD, Rules Docket 97–NM–232–AD, that requires installation of a fail-safe hinge; redesigned warning and power control systems of the main deck cargo door; and a 9g crash barrier on Boeing Model 727 series airplanes that have been modified in accordance with certain STCs held by FedEx. As discussed above, the FAA has determined that:

1. The main deck cargo door hinge is not fail-safe;

2. Certain control systems of the main deck cargo door do not provide an adequate level of safety; and

3. The 9g crash barrier is not structurally adequate during a minor crash landing.

The AD will affect 120 U.S.-registered Boeing Model 727 series airplanes operated by FedEx. The following discussion addresses, in sequence, the actions in this rulemaking and the estimated cost associated with each of these actions. An analysis of the cost is also available in Rules Docket No. 97–NM–232–AD.

1. Main Deck Cargo Door Hinge

Since unsafe conditions have been identified that are likely to exist or develop on other modified Boeing Model 727 series airplanes, paragraph (a) of this AD requires, prior to the accumulation of 4,000 flight cycles since accomplishment of the installation of the main deck cargo door, or within 250 flight cycles after the effective date of this AD, whichever occurs later, a detailed inspection of the external surface of the main deck cargo door hinge to detect cracks. FedEx estimates that this inspection will take about 14 work hours per airplane. At a mechanic's burdened labor rate of $60 per work hour, the cost per airplane will be $840, or $100,800 for FedEx's fleet of 120 affected Boeing Model 727 series airplanes.

Paragraph (b)(1) of the AD requires, within 36 months or 4,000 cycles after the effective date of this AD, whichever occurs first, a detailed inspection of the mating surfaces of both the hinge and the door skin, and the hinge and external fuselage doubler underlying the hinge. The FAA estimates that compliance with this inspection will take 200 work hours per airplane, and that the average labor rate is $60 per work hour. The estimated cost will be $12,000 per airplane, or $1.4 million for the 120 affected Boeing Model 727 series airplanes.

Paragraph (b)(2) of the AD requires installation of a fail-safe door hinge. The compliance time for this installation is also within 36 months or 4,000 cycles after the effective date of the AD, whichever occurs first. The estimated cost to design and certificate such a hinge is $45,000. FedEx estimates that parts for a fail-safe door hinge will cost $2,600 per airplane, while installation will cost $11,520 per airplane, for 192 work hours of labor. Cost for parts and labor for 120 affected Boeing Model 727 series airplanes is estimated to be $1.7 million.

Paragraph (c) of the AD requires that, if any crack or discrepancy is detected during the inspection required by paragraph (a) or (b)(1) of the AD, a repair must be made prior to further flight. The cost of this repair is not attributable to this AD.

For purposes of analysis, the FAA assumes an effective date some time in the fourth quarter of 2002. The cost to comply with paragraphs (a) through (c) is $3.3 million, undiscounted, or $2.9 million discounted to present value. The FAA assumes that the installation of the main deck cargo door hinge (paragraph (b)(2) of this AD) will be accomplished at the same time as the detailed inspection of fastener holes (paragraph (b)(1) of this AD). The FAA also assumes that FedEx will perform these two activities uniformly throughout the 36-month compliance time. Finally, the certification cost for the main deck cargo door hinge is expected to be incurred within the first 6 months after the effective date of this AD.

2. Main Deck Cargo Door Systems

Work on the door systems relates to paragraphs (d) and (e) of the AD. Paragraph (d) of the AD requires, within 60 days after the effective date of this AD, the revising of the Limitations Section of the FAA-approved AFM Supplement to provide the flight crew with procedures for ensuring that all power is removed from the main deck cargo door prior to dispatch of the airplane, and that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane. In addition, paragraph (d) of the AD requires the installation of any associated placards.

FedEx assumes that an external inspection of the flushness of the main deck cargo door, combined with an ''enhanced B-check,'' will be an acceptable interim means to ensure that the cargo door is secured prior to dispatch. Concerning the external inspection, before redesigned door systems are installed (see paragraph (f) of this AD) FedEx estimates that it will take a mechanic 30 minutes to inspect for flushness of the main deck cargo door prior to dispatch. FedEx also estimates that there are 64 flights per day among the 120 affected Boeing Model 727 series airplanes, and that these airplanes fly 260 days per year. Consequently, the estimated cost per inspection, until the door systems are changed, is $30 or $4,133 per airplane, per year. In addition, FedEx estimates that the setup costs for the daily inspection (i.e., procedure materials for the cadre of mechanics to perform the inspection, and for training requirements) will be $50,000.

The occurrence of the ''enhanced B-checks'' on the affected Boeing Model 727 series airplanes is anticipated to occur twice a year. FedEx estimates that the incremental cost for maintenance during these ''enhanced B-checks'' is $11,700 per airplane, per year, until door systems are changed.

Consequently, based on the two activities described above, the FAA estimates the cost for satisfying the requirements of paragraph (d) of this AD at $5.8 million undiscounted, over 36 months, or $5.0 million discounted. These activities will occur until the incorporation of redesigned door systems. Again, the FAA assumes that these activities will occur uniformly over the 36-month compliance time.

Paragraph (e) of this AD requires, within 36 months after the effective date of the AD, incorporation of redesigned main deck cargo door systems. FedEx estimates that the development and certification of the systems will cost $212,000. FedEx estimates that modification parts will cost $110,000 per airplane, and that labor costs will be $34,560 per airplane. FedEx also estimates that 40 percent of the fleet will be modified during a scheduled maintenance visit. The remainder of the fleet will be out of service for an additional 4 days. Based on a lease rate of $6,100 per day, the FAA estimates that the cost of downtime for the fleet will be $1.8 million over the 36-month compliance time. Consequently, the estimated cost for incorporating redesigned door systems for the fleet of 120 affected Boeing Model 727 series airplanes (paragraph (d) of this AD) is $19.3 million. This includes $212,000 for design and certification costs, and $1.8 million for additional downtime.

The total cost to comply with the requirements for incorporating redesigned main deck cargo door systems is $25.1 million, undiscounted, or $21.9 million, discounted.

3. 9g Crash Barrier

Paragraph (f) of this AD requires, within 36 months or 4,000 flight cycles after the effective date of the AD, whichever occurs first, installation of a

main deck cargo barrier that complies with the applicable requirements of CAR part 4b. FedEx estimates that the development and certification of a 9g crash barrier will cost $94,500, that parts will cost $30,000 per airplane, and that labor will cost $23,040 per airplane.

The FAA assumes that FedEx will install 9g crash barriers in their affected fleet uniformly over the 36-month compliance time. Consequently, the total non-discounted cost for this item is estimated to be $6.4 million, or $5.6 million, discounted to present value.

4. AMOC and Special Flight Permits

Paragraph (g) of the AD allows an AMOC or adjustment of compliance time that provides an acceptable level of safety if approved by the Manager of the Atlanta ACO. The FAA is unable to determine the cost of an AMOC, but assumes that it will be less than the cost of complying with the provisions in paragraphs (a) through (f) of the AD.

Paragraph (h) of the AD allows special flight permits in accordance with the regulations to operate an affected airplane to a location where the requirements of the AD could be accomplished.

5. Total Cost of the AD

The FAA estimates that the total compliance cost of the AD will be $34.8 million, undiscounted, or $30.4 million, discounted to present value.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) of 1980 establishes as ''a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA of 1980 requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA of 1980 covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform an assessment of all rules to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that the rule will have such an impact, the agency must prepare a regulatory flexibility analysis as described in the RFA of 1980. However, if after an assessment of a proposed or final rule, an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, Section 605(b) of the RFA of 1980 provides that the head of the agency may so certify. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA conducted the required assessment of this rule, and determined that it will not have a significant impact on a substantial number of small entities. Only one operator, FedEx, is affected by this AD; and FedEx is not a small entity (it employs more than 1,500 people). Consequently, the FAA certifies that this AD will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. Such a mandate is deemed to be a ''significant regulatory action.''

This AD does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

Federalism Assessment

The regulations of this AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this AD will not have sufficient federalism implications to warrant the preparation of a federalism assessment.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–16–19 Boeing: Amendment 39–12858. Docket 97–NM–232–AD.

Applicability: Model 727 series airplanes that have been converted from a passenger- to a cargo-carrying (''freighter'') configuration in accordance with Supplemental Type Certificate (STC) SA1767SO or SA1768SO; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane, including possible loss of flight control or severe structural damage; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants; accomplish the following:

Actions Addressing the Main Deck Cargo Door Hinge

(a) Prior to the accumulation of 4,000 flight cycles since accomplishment of the installation of the main deck cargo door, or within 250 flight cycles after the effective date of this AD, whichever occurs later, perform a detailed inspection of the external surface of the main deck cargo door hinge (both fuselage and door side hinge elements) to detect cracks.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(b) Within 36 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first, accomplish paragraphs (b)(1) and (b)(2) of this AD.

(1) Perform a detailed inspection of the mating surfaces of both the hinge and the door skin and external fuselage doubler underlying the hinge to detect cracks or other discrepancies (e.g., double or closely drilled holes, corrosion, chips, scratches, or gouges). The detailed inspection shall be accomplished in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. The requirements of this paragraph may be accomplished prior to or concurrently with the requirements of paragraph (b)(2) of this AD.

(2) Install a main deck cargo door hinge that complies with the applicable requirements of Civil Air Regulations (CAR) part 4b, including fail-safe requirements, in accordance with a method approved by the Manager, Atlanta ACO.

(c) If any crack or discrepancy is detected during the detailed inspection required by either paragraph (a) or (b)(1) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta ACO.

Note 3: Accomplishment of the actions in accordance with Federal Express E.O. Revision Record 7–5230–7–5000, Revision B, release date December 18, 2001, constitutes compliance with the requirements of paragraphs (b) and (c) of this AD.

Actions Addressing the Main Deck Cargo Door Systems

(d) Within 60 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) Supplement by inserting therein the procedures specified in paragraphs (d)(1) and (d)(2) of this AD, and install any associated placards. The AFM revision procedures and installation of any associated placards shall be accomplished in accordance with a method approved by the Manager, Atlanta ACO.

(1) Procedures to ensure that all power is removed from the main deck cargo door prior to dispatch of the airplane.

(2) Procedures to ensure that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane.

Note 4: Accomplishment of the procedures for ensuring that the main deck cargo door is closed, latched, and locked prior to dispatch, in accordance with Federal Express Service Bulletin FX727–2001–5230–01, dated July 30, 2001, constitutes compliance with the requirements of paragraph (d) of this AD.

(e) Within 36 months after the effective date of this AD, incorporate redesigned main deck cargo door systems (*e.g.*, warning/monitoring, power control, view ports, and means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked), including any associated procedures and placards, that comply with the applicable requirements of CAR part 4b and criteria specified in Appendix 1 of this AD; in accordance with a method approved by the Manager, Atlanta ACO.

Note 5: The design data submitted for approval should include a Systems Safety Analysis and Instructions for Continued Airworthiness that are acceptable to the Manager, Atlanta ACO.

Note 6: Installation of National Aircraft Service, Inc. (NASI), Vent Door System STC ST01438CH, is an acceptable means of compliance with the requirements of paragraph (e) of this AD.

Actions Addressing the Main Deck Cargo Barrier

(f) Within 36 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first, install a main deck cargo barrier that complies with the applicable requirements of CAR part 4b, in accordance with a method approved by the Manager, Atlanta ACO.

Note 7: The maximum main deck total payload that can be carried is limited to the lesser of the approved cargo barrier weight limit, weight permitted by the approved maximum zero fuel weight, weight permitted by the approved main deck position weights, weight permitted by the approved main deck running load or distributed load limitations, or approved cumulative zone or fuselage monocoque structural loading limitations (including lower hold cargo).

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 8: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Effective Date

(i) This amendment becomes effective on September 19, 2002.

Appendix 1

Excerpt from an FAA Memorandum to the Director-Airworthiness and Technical Standards of ATA, dated March 20, 1992

''(1) *Indication System:*

(a) The indication system must monitor the closed, latched, and locked positions, directly.

(b) The indicator should be *amber* unless it concerns an outward opening door whose opening during takeoff could present an immediate hazard to the airplane. In that case the indicator must be *red* and located in plain view in front of the pilots. An aural warning is also advisable. A display on the master caution/warning system is also acceptable as an indicator. For the purpose of complying with this paragraph, an immediate hazard is defined as significant reduction in controllability, structural damage, or impact with other structures, engines, or controls.

(c) Loss of indication or a false indication of a closed, latched, and locked condition must be improbable.

(d) A warning indication must be provided at the door operators station that monitors the door latched and locked conditions directly, unless the operator has a visual indication that the door is fully closed and locked. For example, a vent door that monitors the door locks and can be seen from the operators station would meet this requirement.

(2) *Means to Visually Inspect the Locking Mechanism:*

There must be a visual means of directly inspecting the locks. Where all locks are tied to a common lock shaft, a means of inspecting the locks at each end may be sufficient to meet this requirement provided no failure condition in the lock shaft would go undetected when viewing the end locks. Viewing latches may be used as an alternate to viewing locks on some installations where there are other compensating features.

(3) *Means to Prevent Pressurization:*

All doors must have provisions to prevent initiation of pressurization of the airplane to an unsafe level, if the door is not fully closed, latched and locked.

(4) *Lock Strength:*

Locks must be designed to withstand the maximum output power of the actuators and maximum expected manual operating forces treated as a limit load. Under these conditions, the door must remain closed, latched and locked.

(5) *Power Availability:*

All power to the door must be removed in flight and it must not be possible for the flight crew to restore power to the door while in flight.

(6) *Powered Lock Systems:*

For doors that have powered lock systems, it must be shown by safety analysis that inadvertent opening of the door after it is fully closed, latched and locked, is extremely improbable.''

Issued in Renton, Washington, on August 6, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20506 Filed 8–14–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–233–AD; Amendment 39–12859; AD 2002–16–20]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes Modified in Accordance With Supplemental Type Certificate SA1368SO, SA1797SO, or SA1798SO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger- to a cargo-carrying (''freighter'') configuration, that requires require, among other actions, installation of a fail-safe hinge, redesigned main deck cargo door warning and power control systems, and 9g cargo barrier. This amendment is prompted by the FAA's determination that the main deck cargo door hinge is not fail-safe; that certain main deck cargo door control systems do not provide an adequate level of safety; and that the main deck cargo barrier is not structurally adequate during an emergency landing. The actions specified by this AD are intended to prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane, including possible loss of flight control or severe structural damage; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants.

DATES: Effective September 19, 2002.

ADDRESSES: Information pertaining to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Paul Sconyers, Associate Manager, Airframe and Propulsion Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703–6076; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger to a cargo-carrying (''freighter'') configuration was published in the **Federal Register** on November 12, 1999 (64 FR 61547). That action proposed to require, among other actions, installation of a fail-safe hinge, redesigned main deck cargo door warning and power control systems, and 9g crash barrier.

Background

For the convenience of the reader, certain excerpts and information, below, from the following sections of the preamble of the notice of proposed rulemaking (NPRM) are provided in this final rule: Discussion, Main Deck Cargo Door Hinge, Main Deck Cargo Door Systems, and Cargo Restraint Barrier.

Discussion

Supplemental Type Certificates (STC) SA1797SO and SA1368SO (held by Aeronautical Engineers, Inc.) specify a design for a main deck cargo door, associated cargo door cutout, and door systems. STC SA1798SO (held by Aeronautical Engineers, Inc.) specifies a design for a Class ''E'' cargo interior with a cargo barrier. As discussed in NPRM, Rules Docket No. 97–NM–79–AD (the final rule, AD 98–26–19, amendment 39–10962, was published in the **Federal Register** on January 12, 1999 (64 FR 2016)), which is applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger to a cargo-carrying (''freighter'') configuration, the FAA has conducted a design review of Boeing Model 727 series airplanes modified in accordance with STCs SA1797SO and SA1798SO and has identified several potential unsafe conditions. [Results of this design review are contained in ''FAA Freighter Conversion STC Review, Report Number 3, dated January 27, 1997,'' hereinafter referred to as ''the Design Review Report,'' which is included in the Rules Docket for 97–NM–233–AD.] This NPRM proposes corrective action for three of those potential unsafe conditions that relate to the following three areas: main deck cargo door hinge, main deck cargo door systems, and main deck cargo barrier.

Main Deck Cargo Door Hinge

In order to avoid catastrophic structural failure, it has been a typical industry approach to design outward opening cargo doors and their attaching structure to be fail-safe (*i.e.,* designed so that if a single structural element fails, other structural elements are able to carry resulting loads). Another potential design approach is safe-life, where the critical structure is shown by analyses and/or tests to be capable of withstanding the repeated loads of variable magnitude expected in service for a specific service life. Safe-life is usually not used on critical structure because it is difficult to account for manufacturing or in-service accidental damage. For this reason, plus the fact that none of the STC holders have provided data in support of this approach, the safe-life approach will not be discussed further regarding the design and construction of the main deck cargo door hinge.

Structural elements such as the main deck cargo door hinge are subject to severe in-service operating conditions that could result in corrosion, binding, or seizure of the hinge. These conditions, in addition to the normal operational loads, can lead to early and unpredictable fatigue cracking. If a main deck cargo door hinge is not a fail-safe design, a fatigue crack could initiate and propagate longitudinally undetected, which could lead to a complete hinge failure. A possible consequence of this undetected failure is the opening of the main deck cargo door while the airplane is in flight. Service experience indicates that the opening of a cargo door while the airplane is in flight can be extremely hazardous in a variety of ways including possible loss of flight control, severe structural damage, or rapid decompression, any of which could lead to loss of the airplane.

The design of the main deck cargo door hinge must be in compliance with Civil Air Regulations (CAR) part 4b, including CAR § 4b.270, which requires, in part, that catastrophic failure or excessive structural deformation, which could adversely affect the flight characteristics of the airplane, is not probable after fatigue failure or obvious partial failure of a single principal structural element. One common feature of a fail-safe hinge design is a division of the hinge into multiple segments such that, following failure of any one segment, the remaining segments would support the redistributed load.

The main deck cargo door installed in accordance with STCs SA1797SO and SA1368SO is supported by latches along the bottom of the door and a two-

segment hinge along the top. This two-segment hinge is considered a critical structural element for these STCs. A crack that initiates and propagates longitudinally along either segment of the hinge will eventually result in failure of the entire hinge, because the remaining segment of the hinge is unable to support the redistributed loads. Failure of the entire hinge can result in the opening of the main deck cargo door while the airplane is in flight.

As discussed in the Design Review Report, an inspection of one Boeing Model 727 series airplane modified in accordance with STCs SA1797SO and SA1798SO revealed a number of fasteners with both short edge margins and short spacing in the cargo door cutout external doublers. Some edge margins were as small as one fastener diameter. Fasteners that are placed too close to the edge of a structural member or spaced too close to an adjacent fastener can result in inadequate joint strength and stress concentrations, which may result in fatigue cracking of the skin. If such defects were to exist in the structure of the door or the fuselage to which the main deck cargo door hinge is attached, the attachment of the hinge could fail, and consequently cause the door to open while the airplane is in flight.

Main Deck Cargo Door Systems

In early 1989, two transport airplane accidents were attributed to cargo doors coming open during flight. The first accident involved a Boeing 747 series airplane in which the cargo door separated from the airplane, and damaged the fuselage structure, engines, and passenger cabin. The second accident involved a McDonnell Douglas DC–9 series airplane in which the cargo door opened but did not separate from its hinge. The open door disturbed the airflow over the empennage, which resulted in loss of flight control and consequent loss of the airplane. Although cargo doors have opened occasionally without mishap during takeoff, these two accidents serve to highlight the extreme potential dangers associated with the opening of a cargo door while the airplane is in flight.

As a result of these cargo door opening accidents, the Air Transport Association (ATA) of America formed a task force, including representatives of the FAA, to review the design, manufacture, maintenance, and operation of airplanes fitted with outward opening cargo doors, and to make recommendations to prevent inadvertent cargo door openings while the airplane is in flight. A design working group was tasked with reviewing 14 CFR part 25.783 (and its accompanying Advisory Circular (AC) 25.783–1, dated December 10, 1986) with the intent of clarifying its contents and recommending revisions to enhance future cargo door designs. This design group also was tasked with providing specific recommendations regarding design criteria to be applied to existing outward opening cargo doors to ensure that inadvertent openings would not occur in the current transport category fleet of airplanes.

The ATA task force made its recommendations in the ''ATA Cargo Door Task Force Final Report,'' dated May 15, 1991 (hereinafter referred to as ''the ATA Final Report''). On March 20, 1992, the FAA issued a memorandum to the Director-Airworthiness and Technical Standards of ATA (hereinafter referred to as ''the FAA Memorandum''), acknowledging ATA's recommendations and providing additional guidance for purposes of assessing the continuing airworthiness of existing designs of outward opening doors. The FAA Memorandum was not intended to upgrade the certification basis of the various airplanes, but rather to identify criteria to evaluate potential unsafe conditions demonstrated on in-service airplanes. Appendix 1 of this AD contains the specific paragraphs from the FAA Memorandum that set forth the criteria to which the outward opening doors should be shown to comply.

Applying the applicable requirements of CAR part 4b and design criteria provided by the FAA Memorandum, the FAA has reviewed the original type design of major transport airplanes, including Boeing 727 airplanes equipped with outward opening doors, for any design deficiency or service difficulty. Based on that review, the FAA identified unsafe conditions and issued, among others, the following ADs:

- For certain McDonnell Douglas Model DC–9 series airplanes: AD 89–11–02, amendment 39–6216 (54 FR 21416, May 18, 1989);
- For all Boeing Model 747 series airplanes: AD 90–09–06, amendment 39–6581 (55 FR 15217, April 23, 1990);
- For certain McDonnell Douglas Model DC–8 series airplanes: AD 93–20–02, amendment 39–8709 (58 FR 471545, October 18, 1993);
- For certain Boeing Model 747–100 and –200 series airplanes: AD 96–01–51, amendment 39–9492 (61 FR 1703, January 23, 1996); and
- For certain Boeing Model 727–100 and –200 series airplanes: AD 96–16–08, amendment 39–9708 (61 FR 41733, August 12, 1996).

Using the criteria specified in the ATA Final Report and the FAA Memorandum as evaluation guides, the FAA conducted an engineering design review and inspection of an airplane modified in accordance with STCs SA1797SO and SA1798SO (held by Aeronautical Engineers, Inc.). The FAA identified a number of unsafe conditions with the main deck cargo door systems of these STCs. The FAA design review team determined that the design data of these STCs did not include a safety analysis of the main deck cargo door systems.

For airplanes modified in accordance with STC SA1797SO, SA1798SO, or SA1368SO, the FAA considers the following four specific design deficiencies of the main deck cargo door systems to be unsafe:

1. Indication System

The main deck cargo door indication system for STCs SA1368SO and SA1797SO uses warning lights at the door operator's control panel and a light at the flight engineer's panel. These lights indicate the status of the cargo door closed, latched and locked configurations. All three conditions (*i.e.,* door closed, latched, and locked) should be monitored directly so that the door indication system cannot display either ''latched'' before the door is closed or ''locked'' before the door is latched. The latch and lock sensors are wired in parallel and are tied to a single indicator light. This design can illuminate the ''locked light'' on the control panel of the main deck cargo door even if the latches are latched but not locked. If a sequencing error causes the door to latch and lock without being fully closed, the subject indication system, as designed, may not alert the door operator or the flight engineer of this condition. As a result, the airplane could be dispatched with the main deck cargo door unsecured, which could lead to the cargo door opening while the airplane is in flight and possible loss of the airplane.

The light on the flight engineer's panel is labeled ''DOOR CARGO'' and is displayed in red since it indicates an event that requires immediate pilot action. However, if the flight engineer is temporarily away from his station, a door unsafe warning indication could be missed by the pilots. In addition, the flight engineer could miss such an indication by not scanning the panel. As a result, the pilots and flight engineer could be unaware of, or misinterpret, an unsafe condition and could fail to respond in the correct manner. Therefore, an indicator light should be located in front of and in plain view of

both pilots since one of the pilot's stations is always occupied during flight operations.

Based on the review of the electrical drawings of the door control and door monitoring/annunciation systems and observations from an inspection of an airplane modified in accordance with the subject STCs, the FAA concludes that latent failures (*i.e.,* failures of system components that are not monitored and would go undetected) in the closed, latched, and locked functions may occur and lead to the main deck cargo door opening during flight of the airplane.

The FAA has determined that the main deck cargo door indication system of STCs SA1368SO and SA1797SO also does not meet the improbable level of reliability regarding false indication that is considered adequate for safe operation. Many components are exposed to the environment during cargo loading operations and may be contaminated by precipitation, dirt, and grease, or damaged by foreign objects or cargo loading equipment. As a result, wires, switches, and relays can fail, jam, or short circuit and cause a loss of indication or a false indication to the door operator and flight crew. The design logic of the indication system (*i.e.,* lights which extinguish when the door is locked) could, in the event of latent failures that would extinguish the light, result in an erroneous ''safe'' indication regardless of actual door status.

STCs SA1368SO and SA1797SO lack a safety analysis of the main deck cargo door systems. As a result, even though the light at the door operator's control panel and the light at the flight engineer's panel annunciate the status of closed, latched, and locked, a safety analysis must be developed to show whether the design of the wiring of the main deck cargo door monitoring system meets all FAA requirements.

2. Means To Visually Inspect the Locking Mechanism

The two view ports installed in accordance with STCs SA1797SO and SA1368SO are located externally on the door for the purpose of viewing locking pins at the No. 2 and No. 7 latch positions of the main deck cargo door. These view ports are intended to allow the flight crew to conduct a visual inspection of the cargo door locking mechanism to determine whether the cargo door is closed, latched, and locked. The view ports are used in conjunction with the door warning system and is intended to provide a suitable back-up in the event that the main deck cargo door warning system malfunctions.

However, because of the location of these view ports on the main deck cargo door, a visual inspection may not result in the detection of certain failures (*e.g.,* bending or shearing of locking pins), and consequently the airplane could be dispatched with the main deck cargo door unsecured. Therefore, the FAA finds that these view ports are not a suitable back-up when the cargo door warning system malfunctions.

As discussed in the ATA Final Report and the FAA Memorandum, there must be a means of directly inspecting each lock or, at a minimum, the locks at each end of the lock shaft of certain designs, such that a failure condition in the lock shaft would be detectable.

3. Means To Prevent Pressurization to an Unsafe Level

Boeing 727–200 airplanes modified to install a cargo door in accordance with STC SA1797SO are configured to utilize a mechanical vent door for the purpose of preventing pressurization of the airplane to an unsafe level in the event the main deck cargo door is not closed, latched, and locked. However, Boeing 727–100 airplanes that have been modified in accordance with STC SA1368SO do not have a vent door design to prevent pressurization as part of the STC.

The results of an FAA inspection of the vent door linkage revealed that the linkage design could exhibit single failures that could cause the vent door to malfunction. A complete safety analysis of the vent door mechanical design is necessary to identify and correct all such malfunctions. No single failure of the mechanisms can defeat the intended function of the vent door system.

4. Powered Lock Systems

The main deck cargo door control system for STCs SA1368SO and SA1797SO that utilizes electrical interlock switches is designed to remove door control power (electrical and hydraulic) prior to flight and to prevent inadvertent door openings. Failure modes have been found in the electrical portion of the door control panel, which, in turn, activates the door control hydraulics. The potential for the occurrence of these failure conditions is increased by the harsh operating environment of freighter airplanes. Door system components are routinely exposed to precipitation, dirt, grease, and foreign object intrusion, all of which increase the likelihood of damage. As a result, wires, switches, and relays have a greater potential to fail or short circuit in such a way as to allow the cargo door to be powered open without an operator's command and regardless of electrical interlock positions.

A systems safety analysis would normally evaluate and resolve the potential for these types of unsafe conditions. However, the FAA has reviewed the design data for STCs SA1368SO and SA1797SO. The FAA finds that the powered lock systems of the main deck cargo door do not comply with criteria specified in Appendix 1 of this AD and considers the design of these systems to be unsafe. The need for a system safety analysis is identified in the ATA Final Report and the FAA Memorandum.

Cargo Barrier

In order to ensure the safety of occupants during emergency landing conditions, the FAA first established in 1934, a set of inertia load factors used to design the structure for restraining items of mass in the fuselage. Because the airplane landing speeds have increased over the years as the fleet has transitioned from propeller to jet design, inertia load factors were changed as specified in CAR part 4b.260. Experience has shown that an airplane designed to this regulation has a reasonable probability of protecting its occupants from serious injury in an emergency landing. The 727 passenger airplane was designed to these criteria which specified an ultimate inertia load requirement of 9g in the forward direction. These criteria were applied to the seats and structure restraining the occupants, including the flight crew, as well as other items of mass in the fuselage.

When the 727 passenger airplane is converted to carry cargo on the main deck, a cargo barrier is required, since most cargo containers and the container-to-floor attaching devices are not designed to withstand emergency landing loads. In fact, the FAA estimates that the container-to-floor attaching devices will only support approximately 1.5g's to 3g's in the forward direction. Without a 9g cargo barrier, it is probable that the loads associated with an emergency landing would cause the cargo to be unrestrained and impact the occupants of the airplane, which could result in serious injury or death.

The structural inadequacy of the cargo barrier was evident to the FAA during its review in October 1997 of a Boeing 727 modified in accordance with STC SA1798SO. The observations revealed that the design of the cargo barrier floor attachment and circumferential supporting structure does not provide

adequate strength to withstand the 9g forward inertia load generated by the main deck cargo mass, nor does it provide a load path to effectively transfer the loads from the cargo barrier to the fuselage structure of the airplane. These observations are supported by data contained in ''ER 2785, Structural Substantiation of the 50k 9g Bulkhead Restraint System in Support of STC SA1543SO PN 53–1292–401 for the 9g Bulkhead 53–1980–300 Assembly with Upper Attachment Structure, Lower Attachment Structure, Floor Shear Web Structure, Seat Track Splice Fittings, Seat Tracks, and Seat Track Splices,'' dated September 29, 1996, by M. F. Daniel. Although this report was specific to STC SA1543SO, the FAA has determined that the data are applicable to airplanes modified in accordance with STC SA1798SO because the design principles for attachment of the barriers in both STCs are the same. The report reveals that structural deficiencies were found in the net attach plates and floor attachment structure of the cargo barrier. The data show large negative margins of safety, which indicate that the inertia load capability of the cargo barrier is closer to 2g than the required 9g in the forward direction. From these analyses, it is evident that the cargo barrier would not be capable of preventing serious injury to the occupants during an emergency landing event with the full allowable cargo load.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The FAA has received comments in response to the four NPRM actions (i.e., Rules Dockets 97–NM–232–AD, 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD) that address the same subjects described above for four different sets of cargo modification STCs. Some of these comments addressed only one NPRM, while others addressed all four. Because in most cases the issues raised by the commenters are generally relevant to all four NPRMs, each final rule includes a discussion of all comments received.

Definition of Detailed Visual Inspection

One commenter provided Boeing's definition of a detailed visual inspection. The commenter requests that the FAA approve Boeing's definition as meeting the ''detailed visual inspection'' definition specified in Note 2 of the NPRM. The commenter states that it has incorporated Boeing's definition into its General Maintenance Manual (GMM), and that it is performing the detailed visual inspection of the main deck cargo door hinge in accordance with the GMM. The commenter also states that acceptance of the existing Boeing's definition will allow for work standardization and consistency.

The FAA partially concurs. The FAA concurs that, for the purpose of this AD, the definition provided by the commenter satisfies the intent of the definition contained in Note 2 of this AD. The detailed inspection definition specified in Note 2 of this AD is a standard definition that is used in all ADs that require a detailed inspection. Therefore, the FAA finds that no change to Note 2 of the final rule is necessary. However, for clarification purposes, the FAA has revised all references to a ''detailed visual inspection'' in the NPRM to ''detailed inspection'' in the final rule.

Main Deck Cargo Door Hinge

Two commenters request that the compliance time for accomplishing the detailed visual inspection required by paragraph (a) of the NPRM be revised. One commenter states that the compliance time should include a threshold of ''prior to the accumulation of five years since accomplishment of the original conversion.'' The commenter states that operators of newly modified airplanes should not have to accomplish the detailed visual inspection required by paragraph (a) of the NPRM because it would be unlikely that brand new hinges would develop cracks within 250 flight cycles after being installed. The other commenter states that the compliance time should be revised to ''at the next scheduled 'B' check, or 350 cycles after the effective date of the NPRM, whichever occurs first.'' The commenter states that such an extension would allow the inspection to be accomplished during a regularly scheduled ''B'' check and would not be disruptive of normal maintenance inspection scheduling.

The FAA partially concurs. The FAA does not concur that the compliance time should be extended from 250 flight cycles to 350 flight cycles. In developing an appropriate compliance time for the detailed inspection required by paragraph (a) of this AD, the FAA considered the degree of urgency associated with addressing the subject unsafe condition; the results from an FAA report, ''Damage Tolerance Analysis of 727 Cargo Door Hinge,'' dated October 10, 1997; and the practical aspect of accomplishing the required inspection within an interval of time that parallels the typical ''A'' check scheduled maintenance interval for the majority of affected operators.

However, the FAA concurs with the commenter about the unlikelihood of a newly modified airplane developing cracks within 250 flight cycles since installation. Based on the referenced FAA damage tolerance report, the FAA finds that it is unlikely that a significant crack would occur in the hinge within 4,000 flight cycles since installation. Therefore, the FAA finds that operators must accomplish the detailed inspection ''prior to accumulation of 4,000 flight cycles since accomplishment of the installation of the main deck cargo door, or within 250 flight cycles after the effective date of this AD, whichever occurs later.'' The FAA has revised paragraph (a) of the final rule accordingly.

One commenter requests that a high frequency eddy current (HFEC) inspection be required in paragraph (a) of the NPRM in lieu of the detailed visual inspection. The commenter states that an HFEC inspection should be used because there are no proposed repetitive inspections and a detailed visual inspection can only detect limited crack size.

The FAA does not concur. The FAA finds that accomplishment of the detailed inspection required by paragraph (a) of this AD, in conjunction with the detailed inspection required by paragraph (b)(1) of this AD and the modification required by paragraph (b)(2) of this AD, will ensure the integrity of the door and fuselage structure to which the hinge is attached. Therefore, no change to the final rule is necessary in this regard.

Two commenters request that the FAA revise paragraph (a) of the NPRM to specify that operators will be given ''credit'' for having previously accomplished the proposed detailed visual inspection of the main deck cargo door hinge in accordance with a method approved by the appropriate Aircraft Certification Office (ACO) prior to the effective date of the final rule. One commenter states that operators who accomplished the subject inspection before the effective date of this AD should not be penalized by being forced to reinspect after the effective date of this AD.

The FAA does not consider that a change to the final rule is necessary to give operators such credit. Operators are given credit for work previously performed by means of the phrase in the ''Compliance'' section of the AD that states, ''Required as indicated, unless accomplished previously.'' Therefore, in the case of this AD, if the required detailed inspection has been

accomplished prior to the effective date of this AD in accordance with a method approved by the FAA, this AD does not require that it be repeated.

One commenter requests that the detailed visual inspection required by paragraph (b)(1) of the NPRM be accomplished at the next ''C'' check after five years have elapsed since the airplane was converted from a passenger- to a cargo-carrying (''freighter'') configuration. The commenter also states that a ''C'' check would allow operators to accomplish the inspection during a heavy maintenance visit.

The FAA does not concur. The FAA finds that accomplishment of the detailed inspection required by paragraph (b)(1) of this AD prior to or concurrently with requirements of paragraph (b)(2) of this AD (*i.e.,* installation of a main deck cargo door hinge) will ensure the structural integrity of mating surfaces of the hinge. However, paragraph (g) of this AD does provide affected operators the opportunity to apply for an adjustment of the compliance time if data are presented to justify such an adjustment.

One commenter requests that the detailed visual inspection required by paragraph (b)(1) of the NPRM apply only to airplanes that have been in service for five or more years since installation of the cargo door, because the likelihood of damage increases with time in service. The commenter states that the compliance time specified in paragraph (b) of the NPRM should start from the date that the modification was installed on the airplane.

The FAA does not concur. The FAA finds that the potential for cracks in the hinge is primarily related to flight cycles (*i.e.,* number of fuselage pressure cycles) and, to a lesser extent, calendar time. Therefore, the FAA has determined that the compliance time specified in paragraph (b) of this AD should be related to flight cycles, not calendar time. No change to the final rule is necessary is this regard.

One commenter requests that the NPRM, Rules Docket 97–NM–234–AD, be revised to reference Kitty Hawk Service Bulletin KHA 727–004, Revision A, as an appropriate source of service information for accomplishing the detailed visual inspection required by paragraphs (a) and (b)(1) of the NPRM and the modification required by paragraph (b)(2) of that NPRM. The commenter states that this service bulletin has been submitted to the FAA for approval and should be approved by the FAA prior to the issuance of the NPRM.

Another commenter states that it has developed and submitted to the FAA for approval a modification that segments the hinge on existing cargo converted airplanes and installs a segmented hinge on the new conversion. From this comment, the FAA infers that the commenter is requesting that the NPRM, Rules Docket 97–NM–233–AD, be revised to reference this modification as a terminating action for the requirements of paragraphs (b) and (c) of that NPRM.

The FAA concurs with the commenters' requests to reference service bulletins that constitute compliance with the requirements of paragraphs (b) and (c) of ADs, Rules Dockets 97–NM–233–AD and 97–NM–234–AD. The FAA has reviewed and approved Kitty Hawk Service Bulletin KHA 727–004, Revision B, dated March 3, 1999, as opposed to the Revision A mentioned by one of the commenters. The FAA also has reviewed and approved Aeronautical Engineers Incorporated (AEI) Service Bulletin AEI01–01, Revision B, dated October 26, 2001. These service bulletins describe the following procedures:

1. Visual inspection of all areas of the hinge for cracks or other signs of damage;
2. Inspection of the mating surfaces of the main deck cargo door hinge and the external doubler for discrepancies (*i.e.,* scratches, gouges, or corrosion);
3. Repair of any crack, damage, or discrepancy, if necessary; and
4. Installation of a main deck cargo door hinge that complies with the applicable requirements of CAR part 4b, including fail-safe requirements.

In addition, the FAA has reviewed and approved Federal Express E.O. Revision Record 7–5230–7–5000, Revision B, release date December 18, 2001, and Pemco Service Bulletin 727–53–0006, Revision 1, dated December 4, 2001. The procedures in these service bulletins are similar to those described in AEI Service Bulletin AEI01–01, Revision B, and Kitty Hawk Service Bulletin KHA 727–004, Revision B.

The FAA finds that accomplishment of the actions specified in the four service bulletins described previously constitutes compliance with the requirements of paragraphs (b) and (c) of final rules, Rules Dockets 97–NM–232–AD, 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD; as applicable. Therefore, the FAA has revised those final rules to include a new note that references the subject service bulletins as a source of service information for accomplishing the actions required by paragraphs (b) and (c) of those final rules; as applicable.

One commenter requests that a subparagraph be added to paragraph (b) of the NPRM to require that the detailed visual inspection required by paragraph (b)(1) of the NPRM be accomplished just prior to final hinge installation during the process of converting an airplane from a passenger- to cargo-carrying (''freighter'') configuration. The commenter states that this revision would eliminate its concerns about the installation defects that could cause future problems.

The FAA does not concur. The FAA finds that any FAA-approved corrective action that satisfies the requirements of paragraph (b)(2) of this AD will also address the installation of a hinge during the process of converting a Boeing Model 727 series airplane from a passenger- to a cargo-carrying (''freighter'') configuration. Normally, good manufacturing procedures during production should preclude the necessity for the inspection. No change to the final rule is necessary in this regard.

One commenter notes that paragraph (b)(2) of the NPRM references CAR part 4b. The commenter asks, ''If the FAA, as evidenced by the awarding of an STC, certified the cargo door hinge, how can the current hinge not meet CAR requirements?'' The commenter also asks, ''Wasn't the original STC determined to be in compliance with those requirements? If so, what specifically needs to be done to eliminate the FAA safety concerns about hinges that do not appear to have a problem?'' The commenter suggests that paragraph (b)(2) of the NPRM be revised to require STC holders to design and make available an acceptable replacement hinge. The commenter states that this suggestion should be a condition for STC holders to continue to hold their STC approval.

From the commenter's questions, the FAA infers that the commenter believes a main deck cargo door hinge with an approved STC is compliant with the requirements of CAR part 4b. The FAA finds that clarification is necessary. Generally, there is a presumption by operators that demonstrations of compliance with the requirements of CAR part 4b is a prerequisite for granting an STC. However, the applicant for any design approval is responsible for compliance with all applicable FAA regulations. The FAA has the discretion to review or otherwise evaluate the applicant's compliance to the degree the FAA considers appropriate in the interest of safety. The normal certification process allows for the review and approval of data by FAA designees. Consequently, the FAA office

responsible for the certification of an airplane or modification to an airplane or an aeronautical appliance may not review all details regarding compliance with the appropriate regulations. As explained in the NPRM, the FAA has conducted design reviews and airplane inspections and has identified a potential unsafe condition that relates to the main deck cargo door hinge.

In addition, the FAA does not concur with the commenter's request to revise paragraph (b)(2) of the AD to require STC holders to design and make available an acceptable replacement hinge. The FAA finds that such a requirement is unnecessary, because as previously discussed, the FAA has revised this final rule to include a new note that references the applicable STC holder's service bulletin as a source of service information for accomplishing the actions required by paragraphs (b) and (c) of this final rule.

Main Deck Cargo Door Systems

One commenter requests that the compliance time for accomplishing the Airplane Flight Manual (AFM) revisions required by paragraph (d) of the NPRM be revised from ''within 60 days after the effective date of this AD'' to ''within 60 days after submission of the procedures to the FAA.'' The commenter states that operators should be able to design revisions to the AFM within the proposed 60 days. However, the commenter believes that the Atlanta ACO will not be able to approve every one of those AFM Supplements within that time period.

The FAA does not concur. Since the release of the NPRM, some of the affected STC holders and operators have already developed AFM procedures acceptable to the FAA. The FAA finds that a 60-day compliance time is sufficient to allow the remaining operators and STC holders to develop revisions to the applicable AFMs and their supplements and for the Atlanta ACO to review and approve those AFM revisions.

One commenter submitted procedures for accomplishing the requirements of paragraph (d) of NPRM, Rules Docket 97NM–232AD. The commenter requests that the FAA approve those procedures prior to issuance of the final rule and include those procedures in the final rule. The commenter states that it has completed a Safety Assessment Report for each of the door configurations currently operating in its fleet. The commenter believes the results of the report demonstrate that it is ''extremely improbable'' that the door will inadvertently open in flight for any reason. Although the analysis does not demonstrate compliance with the ''extremely improbable'' standard, the commenter states that for a limited time of 36 months the door system, as installed, provides a sufficient level of safety to be considered acceptable with no modification or change in operational procedures.

The FAA partially concurs. In order to gain a better understanding of the referenced Safety Assessment Report, the FAA had a telecon with the commenter on February 19, 2000, to discuss a series of questions, which were provided to the commenter prior to the telecon, about the report. (The minutes of this telecon are included in Rules Docket 97NM–232AD.) In addition to the information that it provided at the telecon, the commenter also provided an analysis of the Safety Assessment Report in a letter, dated February 16, 2000, and a revised table of the Safety Assessment Report in a letter, dated March 6, 2000. The analysis in these letters provided, for a variety of failure modes, the probability of the main deck cargo door not being in the closed, latched, and locked condition prior to dispatch. The analysis showed that the warning systems of the main deck cargo door and the means to prevent pressurization if the door is not closed, latched, and locked, only meet some of the requirements of CAR § 4b.606 and criteria specified in FAA memorandum, dated March 20, 1992 (referenced in the preamble of the NPRM). The commenter also provided Revision 16 of its Boeing B–727 Flight Manual, which further clarifies a change in the procedures for verifying that the main deck cargo door is closed, latched, and locked.

In light of the clarification provided by the commenter, the FAA concurs that the procedures submitted by the commenter provide an adequate level of safety until the requirements of paragraph (e) of this AD have been accomplished, considering the level of probability of occurrence of certain failures of the warning systems of the main deck cargo door and strict adherence to the door checking procedures and associated training requirements. Since issuance of the NPRM, the FAA has reviewed and approved Federal Express Service Bulletin FX727–2001–5230–01, dated July 30, 2001, which describes procedures for ensuring that the main deck cargo door is closed, latched, and locked prior to dispatch. Accomplishment of these actions constitutes compliance with the requirements of paragraph (d) of final rule, Rules Docket 97–NM–232–AD. Therefore, the FAA has revised the final rule, Rules Docket 97–NM–232–AD, to include a new note that references the subject service bulletin as a source of service information for accomplishing the actions required by paragraph (d) of that final rule.

One commenter provided procedures for accomplishing the requirements of paragraph (d) of NPRM, Rules Docket 97–NM–233–AD, on airplanes modified in accordance with STC SA1368SO, on which a vent door has not been installed, and on airplanes modified in accordance with STC SA1797SO, on which a vent door has been installed. The commenter states that its procedures will ensure that the main deck cargo door is properly closed, latched, and locked prior to flight.

From this comment, the FAA infers that the commenter is requesting that the FAA approve its procedures as an acceptable means of compliance to the requirements of paragraph (d) of the final rule, Rules Docket 97–NM–233–AD. The FAA does not concur. The FAA finds that any proposed operating procedure must have sufficient validation and verification that the procedures are realistic and designed to minimize possible human error. The procedure also must provide for adequate checks and balances in the event the procedure is not strictly followed. In addition, the commenter did not provide any validation of the operating procedure or results of a safety analysis. However, the FAA may approve requests for an alternative method of compliance (AMOC) under the provisions of paragraph (g) of AD, Rules Docket 97–NM–233–AD, if sufficient data are submitted to substantiate that such a operating procedure would provide an acceptable level of safety.

One commenter provided procedures for accomplishing the requirements of paragraph (d) of NPRM, Rules Docket 97–NM–234–AD. In support of its procedures, the commenter states, among other items, that an internal direct visual inspection of the latching and locking system is not possible on Model 727 series airplanes affected by that NPRM because the latching and locking systems are covered by a protective guard/cover that prevents direct viewing of these systems. Removing these covers would expose the latching and locking systems to possible foreign object damage (FOD) or damage from shifting freight. The commenter states that this condition is far more dangerous than a failure of the latching and locking systems. The commenter also states that most of the affected airplanes are equipped with flip up sill protectors, which further block

the visibility of the bottom of the cargo door area (latch and lock area). The commenter concludes that a visual inspection of the latching and locking mechanisms is not appropriate for the airplane type and would create severe operational disruption with no benefit.

The FAA concurs with the commenter's conclusion that a visual inspection of the latching and locking mechanisms is not appropriate for accomplishing the requirements of paragraph (d) of final rule, Rules Docket 97–NM–234–AD. The FAA notes that paragraph (d) of that final rule does not specifically require a visual inspection of the locking mechanisms of the main deck cargo door after the door is closed, as suggested by the commenter. Since issuance of the NPRM, the FAA has reviewed and approved Kitty Hawk Service Bulletin KHA 727–008, dated January 7, 2000, which describes procedures for ensuring that the main deck cargo door is closed, latched, and locked prior to dispatch. These procedures are identical to those procedures provided by the commenter. Accomplishment of these actions constitutes compliance with the requirements of paragraph (d) of final rule, Rules Docket 97–NM–234–AD. Therefore, the FAA has revised final rule, Rules Docket 97–NM–234–AD, to include a new note to reference the subject service bulletin as a source of service information for accomplishing the actions required by paragraph (d) of that final rule.

One commenter states that the requirements for ''a means to prevent pressurization to an unsafe level'' and ''direct visual examination of all locks'' are not included in the certification basis of Model 727 series airplanes and should not be required for the interim action.

From this comment, the FAA infers that the commenter is referring to the interim actions required by paragraph (d) of the NPRM and to extracts from Appendix 1 of this AD, which sets forth the industry-accepted criteria to which the outward opening doors must be shown to comply per paragraph (e) of the NPRM. The FAA does not concur. The commenter has misinterpreted the requirements of paragraph (d) of this AD. Paragraph (d) of this AD requires procedures to ensure that all power is removed from the main deck cargo door prior to dispatch and to ensure that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane. This paragraph does not specify or limit what means or actions would be acceptable to the FAA. Operators could submit a means to prevent pressurization to an unsafe level and direct visual inspection of the locks as possible ways to ensure that the main deck cargo door is secure, in accordance with paragraph (d) of this AD. In addition, to comply with paragraph (e) of this AD, the criteria specified in Appendix 1 of this AD must be applied, irrespective of the certification basis of the airplane. Therefore, no change to the final rule is necessary in this regard.

One commenter requests that the proposed compliance time specified in paragraph (e) of the NPRM be revised from ''within 36 months after the effective date of this AD'' to ''at the next 'C' check after the modifications are approved by the Manager, Atlanta ACO.'' The commenter states that such a compliance time would make everybody (*i.e.,* designer, operator, and FAA) share responsibility for time delays encountered during the modification design and approval process.

The FAA does not concur. Since issuance of the NPRM, the FAA has reviewed and approved two modifications (*i.e.,* National Aircraft Service, Inc. (NASI) STC ST01438CH and Pemco STC ST01270CH) as acceptable means for compliance with the requirements of paragraph (e) of final rules, Rules Dockets 97–NM–232–AD and 97–NM–235–AD; as applicable. Therefore, the FAA has revised the final rules, Rules Dockets 97–NM–232–AD and 97–NM–235–AD, to include a new note to reference the applicable STC as a source of service information for accomplishing the requirements of paragraph (e) of those final rules. The FAA finds that a 36-month compliance time for accomplishing the action specified in paragraph (e) of those final rules is not only sufficient for the design of the corrective actions, but also provides adequate time for operators to schedule the installation within an interval of time that parallels a heavy maintenance visit. However, under the provisions of paragraph (g) of final rules, Rules Dockets 97–NM–232–AD and 97–NM–235–AD, the FAA may approve requests for an adjustment of compliance times if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Main Deck Cargo Barrier

One commenter requests that, before issuance of the final rule, industry and the FAA form a review team to find a way of lowering the costs associated with accomplishing the proposed installation of a 9g crash barrier. The commenter suggests that lower costs could be achieved by fixing the existing barrier (*e.g.,* the loads could be spread by the addition of structural reinforcement attachment angles) or designing a new barrier. The commenter states that the Ventura Aerospace, Inc., cargo barrier STC ST00848LA, which is an approved means of compliance with the requirements of paragraph (f) of NPRMs, Rules Dockets 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD, is an adequate barrier; however, the parts and installation cost estimates for the installation in those NPRMs are too low. The commenter gave examples of various actions and associated work hours that would be necessary to accomplish the proposed installation of the Ventura 9g crash barrier.

The FAA does not concur with the commenter that a review team is necessary, and that the cost estimates of NPRMs, Rules Dockets 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD, for accomplishing the installation of a main deck cargo barrier are too low. The FAA acknowledges that installation of a Ventura Aerospace, Inc., cargo barrier STC ST00848LA is an approved means of compliance with the requirements of paragraph (f) of final rules, Rules Dockets 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD. However, the cost estimates in the subject NPRMs were not specifically for installation of the subject Ventura 9g crash barrier, but were for installation of a 9g crash barrier that complies with the applicable requirements of CAR part 4b. The installation cost estimate of the NPRMs was provided to the FAA by Pemco based on the best data available to date.

The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur ''incidental'' costs in addition to the ''direct'' costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up; planning time; or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. Furthermore, because the FAA generally attempts to impose compliance times that coincide with operators' scheduled maintenance, the FAA considers it inappropriate to attribute the costs associated with aircraft ''downtime'' to the cost of the AD, because, normally, compliance with the AD will not necessitate any additional downtime beyond that of a regularly scheduled maintenance visit.

Public Meeting

Several commenters request that the FAA hold a public meeting prior to the issuance of the final rule in the event

that the FAA does not find their procedures acceptable for compliance with the requirements of paragraph (d) of the NPRM. The commenters state that such a meeting would provide a forum for productive face-to-face discussions similar to the process used by industry's B–727 Working Group.

The FAA does not concur. As discussed previously, the FAA has accepted some of the procedures submitted by the commenters. Also, in consideration of the differing configurations of the main deck cargo door systems between the various affected STCs, a public meeting to discuss the AD may be significantly restricted in some cases because of the proprietary design and data issues. However, the FAA is available to discuss any particular proposal for procedures specific to the airplane configuration with each of the affected STC holders or operators. Further, the FAA may approve requests for an AMOC under the provisions of paragraph (g) of this AD if sufficient data are submitted to substantiate that such a procedure would provide an acceptable level of safety. Therefore, the FAA finds that no public meeting is necessary.

Issue Separate ADs

One commenter requests that the NPRM be split into separate ADs for each issue—main deck cargo door hinge, main deck cargo door systems, and 9g crash barrier. The commenter states that multiple actions addressed by a single AD make managing the actions very unwieldy and complicated.

The FAA does not concur. The FAA is not convinced that separate ADs for each issue would resolve the complexity of this AD. The FAA has determined that a less burdensome approach is to issue only one AD for each STC holder that addresses the potential unsafe conditions that relate to the main deck cargo door hinge, main deck cargo door systems, and main deck cargo barrier. In addition, operators have already initiated actions to accomplish the requirements of this AD without apparent complications.

ACO Approval

One commenter requests that the actions required by the NPRM that must be accomplished in accordance with a method approved by the Manager, Atlanta ACO, be approved by the Manager, Transport Airplane Directorate. The commenter states that the affected Boeing Model 727 series airplanes are not small airplanes, and that the approving authority should be someone in an ACO from the Transport Airplane Directorate who understands structural repairs of transport category airplanes.

The FAA does not concur. Since the subject STCs were issued by the Atlanta ACO, that office has certificate responsibility for the airplanes affected by this AD. The Atlanta ACO is most cognizant of the design details of the subject STCs and, therefore is more able to address each operator's specific issues for complying with paragraph (d) of this AD. The Manager of the Atlanta ACO will coordinate the review of the submittals with the Transport Airplane Directorate, which has established a team consisting of members from several ACOs to review all requests in accordance with paragraphs (b)(1), (b)(2), (c), (d), (e), and (f) of this AD.

Principal Maintenance Inspector (PMI) or Principal Operations Inspector (POI) Approval

One commenter requests that the FAA allow the individual operator's local PMI or POI to approve the AFM procedures for ensuring that the main deck cargo door is closed, latched, and locked required by the NPRM, or provide an option in the NPRM that allows the procedures to be added to the airplane operator manual (AOM), if applicable. The commenter states that such approval would ensure that the approval process is accomplished quickly.

The FAA does not concur. Paragraph (d) of this AD requires comprehensive engineering evaluation in consideration of the applicable requirements of CAR part 4b and the criteria specified in Appendix 1 of this AD. Consequently, the evaluation must be conducted by the Manager, Atlanta ACO, to determine an acceptable level of safety. The PMI or POI for the air carrier is normally not familiar with all the design considerations provided by the requirements of CAR part 4b and Appendix 1 of this AD.

Cost

One commenter requests that an industry/FAA team determine a less costly method to fix the existing barriers to satisfy the FAA's concerns. For example, the loads could be spread by the addition of structural reinforcement attachment angles. The commenter states that replacing the barrier is an extreme measure, and that there must be some kind of structural additions that could be made to the existing barrier to make it acceptable at a much lower cost.

The FAA partially concurs. The STC holders and operators are certainly free to form an industry team to find common solutions. However, the FAA's reason for participation would not be for the purpose of developing a less costly design, but rather to ensure that the final design is compliant with the applicable regulations.

One commenter requests that the FAA require STC holders to design the correction for the NPRM as a warranty issue. The commenter states that small operators, who do not have in-house engineering capability, will be at a great disadvantage when attempting to design remedies for this NPRM. The commenter also states that this NPRM places a substantial financial and operational burden on ''small entities'' just from the standpoint of not having a remedy already designed and approved.

The FAA does not concur. Any warranty agreements between the operator and an STC holder are not the responsibility of the FAA. The burden on small entities is addressed in the Regulatory Flexibility Analysis and Summary and Regulatory Sections of this AD.

Descriptive Language of Preamble

One commenter states that it found the following four factual inaccuracies in the NPRM, Rules Docket 97–NM–232–AD, and requests that the FAA correct them.

1. The commenter notes that paragraph six under the heading ''Main Deck Cargo Door System'' reads, ''* * * However, the FAA is aware of two events in which the main deck cargo door opened during flight. These events occurred on FedEx passenger/freighter conversion STC's in October 1996, and March 1995.'' The commenter states that it does not have any information or records indicating that the main deck cargo door opened in flight in October 1996 or March 1995. In the March 1995 incident, the commenter contends that the door, upon landing, was found to be closed and locked, and that the lock bar was found to be in the unlocked position. The commenter states that it found a control valve electrical connection of the main deck cargo door to be disconnected, and that the door operated normally once it was reconnected.

2. The commenter disagrees with the sentence under the heading ''1. Indication System'' in the preamble of the NPRM that reads, ''Both of these lights indicate the status of the cargo door latch and lock positions, but do not indicate either the door open or closed status.'' The commenter states that its system does monitor and indicate the door closed status. If the door closed switch is not depressed, the light will stay illuminated, even if the door lock

latches have rolled and the lock bar has moved into place.

3. The commenter notes that paragraph two under the heading ''2. Means to Visually Inspect the Locking Mechanism'' reads, ''* * * Although an indicator flag attached to the lock shaft can be seen through the view port when the shaft is in the 'locked' position, a failure between the shaft and the pins could go undetected, because this flag is attached to the lock shaft and not the actual lock pins.''

The commenter states that the flag is attached to the lock bar on Model 727–100 series airplanes. The lock plates are also bolted directly to the lock bar (no linkages). Therefore, the commenter contends that both the flag and lock plates become integrated parts of the lock bar.

In addition, the commenter states that the flag is attached to a lock pin on Model 727–200 series airplanes, and that the lock pin linkage does not have springs or an actuator attached to it. The commenter also contends that movement would have to be transmitted through the lock bar. The commenter further states that the stress analysis for Model 727–200 series airplanes shows high margins of safety in yield, bending, and shear for the locking hinges and fasteners.

4. The commenter notes that paragraph three under the heading ''3. Means to Prevent Pressurization to an Unsafe Level'' in the preamble of the NPRM reads, ''Boeing 727–100 airplanes modified in accordance with the subject STC's have no means of preventing pressurization in the event that the main deck cargo door is not closed, latched, and locked, and therefore, have a higher risk of a cargo door opening while the airplane is in flight and possible loss of the airplane.'' The commenter states that the system used on Model 727–100 series airplanes has a relay that drives the ground venturi system, which in turns opens the outflow valve when the main deck cargo door is not closed and locked, hence pressurization is not possible.

For item 1 above, the FAA partially agrees with the commenter. In the preamble of the NPRM, the FAA incorrectly referenced October 1996 as a date of a door opening event. The correct date is December 9, 1994. The pilots' report (which is included in Rules Docket 97–NM–232–AD) on this event states that shortly after takeoff the warning light for the main deck cargo door illuminated. Following the open in-flight procedures for the main deck cargo door, the flight crew safely returned the airplane to the departure airport. The post-flight inspection revealed that the main deck cargo door opened approximately two feet. Also, in reference to the March event where the commenter states that the door did not open in flight, a verbal report (*i.e.,* ''FAA Freighter Conversion STC Review Report Number 2, dated October 16–18, 1996,'' which is included in Rules Docket 97–NM–232–AD) from the maintenance organization of the commenter's company states that the main deck cargo door was unlocked, and that the door was flush with the exterior of the airplane. The report on this latter event states that, following departure and at 17,000 feet, the warning light of the main deck cargo door came on followed by cabin altitude climbing. While it is not clear to the FAA whether or not the main deck cargo door opened while the airplane was in flight, the condition for possible door opening (*i.e.,* rotation of the lock bar to the unlocked position in flight) did occur, which could have led to a door opening while the airplane is in flight. Therefore, the FAA has revised the ''Background'' Section (''Main Deck Cargo Door Systems'' subsection) in the preamble of final rule, Rules Docket 97–NM–232–AD, to correct the date of the subject event.

For items 2. and 4. above, the FAA agrees with the commenter's correction to items 2. and 4. above and has revised the ''Background'' Section (''Indication System'' and ''Means to Prevent Pressurization to an Unsafe Level'' subsections) in the preamble of final rule, Rules Docket 97–NM–232–AD, accordingly. However, we find that the correction to item 2. does not alleviate the unsafe design features that were single point failures in the door control/outflow valve interface, which could result in the valve not sensing and responding to an unsafe door condition. With the current design, it is possible that the outflow valve or associated controllers may not perform their intended function when utilized for the purpose of preventing pressurization of the airplane in the event of an unsecured door. This condition could result in cabin pressurization forcing an unsecured door open while the airplane is in flight and possible loss of the airplane.

Further, we find that the correction to item 4. does not alleviate the safety concern regarding the design feature where ALL three conditions (*i.e.,* door closed, latched, and locked) are not directly monitored. If a sequencing error caused the door to latch and lock without being fully closed, the subject indication system, as designed, would not directly alert the door operator or the flight engineer of this condition. As a result, the airplane could be dispatched with an unsecured main deck cargo door, which could lead to the cargo door opening while the airplane is in flight and possible loss of the airplane.

For item 3. above, the FAA does not concur that the attachment of the ''flag'' to the lock bar on Model 727–100 series airplanes is sufficient to indicate the position of the lock pins, even though the lock pins are bolted to the lock bar. The FAA has determined that any failure condition of a lock pin would not be detected when observing the position of the flag through the view port.

Explanation of Change to Unsafe Condition

To more accurately reflect the identified unsafe condition of this AD, the FAA has revised the final rule where applicable to read, ''to prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight and consequent rapid decompression of the airplane, including possible loss of flight control or severe structural damage; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants.''

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Regulatory Evaluation Summary

This analysis estimates the costs of AD, Rules Docket 97–NM–233–AD, which requires installation of a fail-safe hinge; redesigned warning and power control systems of the main deck cargo door; and a 9g crash barrier on Boeing Model 727 series airplanes that have been modified in accordance with certain STCs held by AEI. As discussed above, the FAA has determined that:

1. The main deck cargo door hinge is not fail-safe;

2. Certain control systems of the main deck cargo door do not provide an adequate level of safety; and

3. The 9g crash barrier is not structurally adequate during a minor crash landing.

It is estimated that 78 U.S.-registered Boeing Model 727 series airplanes will

be affected by this AD. The following discussion addresses, in sequence, the actions in this rulemaking and the estimated cost associated with each of these actions. An analysis of the costs is also available in Rules Docket 97–NM–233–AD.

1. Main Deck Cargo Door Hinge

Since unsafe conditions have been identified that are likely to exist or develop on other modified Boeing Model 727 series airplanes, paragraph (a) of this AD requires, prior to the accumulation of 4,000 flight cycles since accomplishment of the installation of the main deck cargo door, or within 250 flight cycles after the effective date of this AD, whichever occurs later, a detailed inspection of the external surface of the main deck cargo door hinge to detect cracks. AEI estimates that this inspection will take 2 work hours per airplane. At a mechanic's burdened labor rate of $60 per work hour, the cost per airplane will be $120 or $9,360 for the 78 affected Boeing Model 727 series airplanes.

Paragraph (b)(1) of this AD requires, within 36 months or 4,000 cycles after the effective date of the AD, whichever occurs first, a detailed inspection of the mating surfaces of both the hinge and the door skin, and the hinge and the external fuselage doubler underlying the hinge. The FAA estimates that compliance with this inspection will take 200 work hours per airplane, and that the average labor rate is $60 per work hour. The estimated cost per airplane will be $12,000, or $936,000 for the affected fleet of 78 Boeing Model 727 series airplanes.

Paragraph (b)(2) of the AD requires the installation of a fail-safe door hinge. The compliance time for this installation is also within 36 months or 4,000 cycles after the effective date of this AD, whichever occurs first. AEI estimates that the cost to design and certificate such a hinge will be $25,000, and that the modification work for the hinge will take 50 hours of work per airplane. The modification will include the cutting of the existing hinge into an acceptable number of sections, so that it results in a fail-safe door hinge. Total compliance cost for this provision for the affected fleet of 78 airplanes is estimated to be $259,000.

Paragraph (c) of the AD requires that, if any crack or discrepancy is detected during the inspection required by paragraph (a) or (b)(1) of the AD, a repair must be made prior to further flight. The cost of this repair is not attributable to this AD.

For purposes of analysis, the FAA assumes an effective date of some time in the fourth quarter of 2002. The FAA also assumes that the installation of the main deck cargo door hinge (paragraph (b)(2) of this AD) will be accomplished at the same time as the detailed inspection of fastener holes (paragraph (b)(1) of this AD). The FAA also assumes that the affected carriers will perform these two activities uniformly throughout the 36-month compliance time. Finally, the certification cost for the main deck cargo door hinge is expected to be incurred within the first 6 months after the effective date of the AD. Consequently, the cost to comply with paragraphs (a) through (c) of this AD is estimated to be $1.2 million, in undiscounted values, or $1.1 million, discounted to present value (at 7 percent).

2. Main Deck Cargo Door Systems

Work on the main deck cargo door systems relates to paragraphs (d) and (e) of the AD. Paragraph (d) of this AD requires, within 60 days after the effective date of this AD, revising the Limitations Section of the FAA-approved AFM Supplement to provide the flight crew with procedures to ensure that all power is removed from the main deck cargo door prior to dispatch of the airplane, and that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane. These procedures are expected to include an inspection (until the incorporation of the redesigned main deck cargo door systems), described in the next paragraph. In addition, paragraph (d) of the AD requires the installation of any associated placards.

The FAA assumes that Boeing Model 727 series airplanes, converted under an AEI STC, will have an acceptable pressurization vent door installed, which operators could use to visually determine whether the vent is in the proper position prior to dispatch, indicating that the door is closed, latched, and locked. The FAA estimates that this activity will take no more than 30 minutes. Assuming that each affected airplane flies one flight per day and 260 days per year, the cost per inspection is estimated to be $30 (for 30 minutes), or $7,800 per airplane per year, until the door system is changed. This results in a total cost of $1,825,200 undiscounted, for the affected fleet, over 36 months.

Paragraph (e) of the AD requires, within 36 months after the effective date of the AD, incorporation of redesigned main deck cargo door systems. The FAA estimates that the development and certification of the system will cost $25,000. Modification parts will cost $5,000 per airplane, and that labor costs will be $6,000 per airplane for 100 hours of work. The FAA assumes that the operators will incorporate redesigned main deck cargo door systems during regularly scheduled maintenance. The total costs of installing redesigned main deck cargo door systems, including certification, parts, and labor are estimated to be $883,000 for the affected fleet over the 36-month compliance time.

The total estimated cost to comply with the requirements for incorporating main deck cargo door systems is $2.7 million, undiscounted, or $2.4 million, discounted to present value.

3. 9g Crash Barrier

Paragraph (f) of the AD requires, within 36 months or 4,000 flight cycles after the effective date of the AD, whichever occurs first, installation of a main deck cargo barrier that complies with the applicable requirements of CAR part 4b. Ventura Aerospace holds an STC for an approved 9g crash barrier, and the FAA expects that operators whose airplanes have been modified in accordance with AEI STCs will purchase 9g crash barrier kits from Ventura Aerospace. In response to one public comment and based on new data, there was an increase in the cost estimate for the Ventura 9g barrier in this final regulatory evaluation from that shown in the NPRM. The cost of a barrier kit is $67,000, while labor cost (to install the 9g crash barrier) is estimated at $33,000 per airplane (for 550 hours of work). Also, while the 9g crash barrier is installed, an affected airplane is expected to be out of service for 7 additional days, at an estimated out-of-service cost of $15,000 per day. The commenter estimated the cost per airplane, for the Ventura 9g crash barrier, at $193,500. With the new data, the FAA estimated the cost per airplane (for the Ventura 9g barrier) at $205,000.

The FAA assumes that operators will install 9g crash barriers uniformly over the 36-month compliance time. The total cost for the 78 airplanes to comply with paragraph (f) of the AD is estimated to be $16.0 million, undiscounted, or $14.0 million discounted to present value.

4. AMOC and Special Flight Permits

Paragraph (g) of the AD allows an AMOC or adjustment of compliance time that provides an acceptable level of safety if approved by the Manager of the Atlanta ACO. The FAA is unable to determine the cost of an AMOC, but assumes that it will be less than the cost of complying with the provisions in paragraphs (a) through (f) of the AD.

Paragraph (h) of the AD allows special flight permits in accordance with the

regulations to operate an affected airplane to a location where the requirements of the AD could be accomplished.

5. Total Cost of the AD

The FAA estimates that the total compliance cost of the AD will be $19.9 million, undiscounted, or $17.4 million discounted to present value.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA of 1980 requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA of 1980 covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform an assessment of all rules to determine whether the rule will have a significant economic impact on a substantial number of small entities. If the determination is that the rule will have such an impact, the agency must prepare a regulatory flexibility analysis as described in the RFA of 1980. However, if after an assessment of a proposed or final rule, an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA of 1980 provides that the head of the agency may so certify. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Issues To Be Addressed in a Final Regulatory Flexibility Analysis (FRFA)

The central focus of the FRFA, like the initial Regulatory Flexibility Analysis, is the requirement that agencies evaluate the impact of a rule on small entities and analyze regulatory alternatives that minimize the impact when there will be a significant economics impact on a substantial number of small entities.

The requirements, outlined in section 604(a)(1–5) are listed and discussed below:

1. A succinct statement of the need for, and objectives of, the rule:

The FAA has determined that the main deck cargo door hinge is not fail-safe; certain main deck cargo door control systems do not provide an adequate level of safety; and the main deck cargo barrier is not structurally adequate during a minor crash landing. The actions specified in the AD are intended to prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane, including possible loss of flight control or severe structural damage; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants.

Under the United States Code (U.S.C.), the FAA Administrator is required to consider the following matter, among others, as being in the public interest: assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce (*see* 49 U.S.C. 44101(d)). Forty-nine U.S.C. 44701(a) provides broad rulemaking authority to ''promote safe flight of civil aircraft in air commerce.'' Accordingly, this AD will amend Title 14 of the CFRs to require operators of Boeing Model 727 series airplanes that have been converted from a passenger to a cargo-carrying configuration to correct the identified unsafe condition.

2. A summary of the significant issues raised by the public comments in response to the initial Regulatory Flexibility Analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments:

There was one public comment that related to small entities/operators. That comment indicated that the designing of remedies to address the items required by the AD would create a burden for those small operators who do not have in-house engineering capability to design such remedies.

In response, the FAA states that the STC holders, including AEI, have developed solutions for the items required by the AD, which will be available to small operators.

3. A description of, and an estimate of the number of, small entities to which the rule will apply or an explanation of why no such estimate is available:

The entities affected by the rule are those operating U.S.-registered converted Boeing Model 727 series airplanes. The FAA estimates that 24 carriers operate airplanes that will be affected by this AD. Six of these operators are foreign entities. Of the U.S. operators, 5 entities are large (they employ more than 1,500 people). The estimated discounted cost of the AD, for the 78 affected airplanes, is $17.4 million ($19.9 million, undiscounted). This translates into a discounted cost per affected airplane of about $223,000, or about $85,000 in (average) annualized cost per affected airplane (over the 36-month compliance time).

The annualized cost of the AD for each affected small operator was estimated by multiplying the number of affected airplanes per operator by the annualized cost per airplane. This cost was then compared to (divided by) the annual revenues (mostly for 1998) of the affected small operators. With regard to revenue data, these data were not easily available for all carriers. In some cases, the annual revenue estimate was the midpoint of a range (provided in a public source).

The resulting ratio, for each affected small operator, showed that in five cases, this ratio was either equal to, or exceeded, one percent. In two cases, the ratio exceeded three percent. Based on these estimates, the FAA has determined that the rule will have a significant impact on a substantial number of small entities.

4. A description of the projected reporting, record-keeping, and other compliance requirements of the rule, including an estimate of the classes of small entities, which will be subject to the requirement, and the type of professional skills necessary for preparation of the report or record:

With two minor exceptions, the rule will not mandate additional reporting or record-keeping. The rule will not overlap, duplicate, or conflict with existing Federal rules.

The AD will require operators to report results of the visual inspection of the main deck cargo door hinge and the visual inspection of the fastener holes common to the main deck cargo door hinge and underlying door and fuselage structure. The cost of these reports is negligible.

5. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected:

The FAA acknowledges that the rule will impose a financial requirement on small entities. Therefore, the agency considered alternatives to the rule. These alternatives are:

- Exclude small entities; and

• Extend the compliance date for small entities.

The FAA has determined that the option to exclude small entities from the requirements of the rule is not justified. The unsafe condition that exists on an affected Boeing Model 727 series airplane operated by a small entity is as potentially catastrophic as that on an affected Model 727 series airplane operated by a large entity.

The FAA also considered options to extend the compliance period for small operators. The Boeing 727 Freighter Industry Working Group, which includes all affected U.S. operators (including small entities), provided input on the incorporation of corrective actions for the door hinge, door systems, and 9g crash barrier issues. The FAA initially proposed a compliance time of 28 months, consistent with a related AD dealing with the cargo floor structure on the same airplanes. The working group requested an extension to 36 months. Following review of the working group's request, the FAA finds 36 months to be an acceptable compliance time. Therefore, the FAA has, in fact, considered and accepted this alternative and has accommodated small entity concerns about compliance time.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. Such a mandate is deemed to be a ''significant regulatory action.''

This AD does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

Federalism Implications

The regulations of this AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this AD will not have sufficient federalism implications to warrant the preparation of a federalism assessment.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–16–20 Boeing: Amendment 39–12859. Docket 97–NM–233–AD.

Applicability: Model 727 series airplanes that have been converted from a passenger- to a cargo-carrying (''freighter'') configuration in accordance with Supplemental Type Certificate (STC) SA1368SO, SA1797SO, or SA1798SO; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane, including possible loss of flight control or severe structural damage; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants; accomplish the following:

Actions Addressing the Main Deck Cargo Door Hinge

(a) Prior to the accumulation of 4,000 flight cycles since accomplishment of the installation of the main deck cargo door, or within 250 flight cycles after the effective date of this AD, whichever occurs later, perform a detailed inspection of the external surface of the main deck cargo door hinge (both fuselage and door side hinge elements) to detect cracks.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(b) Within 36 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first, accomplish paragraphs (b)(1) and (b)(2) of this AD.

(1) Perform a detailed inspection of the mating surfaces of both the hinge and the door skin and external fuselage doubler underlying the hinge to detect cracks or other discrepancies (*e.g.,* double or closely drilled holes, corrosion, chips, scratches, or gouges). The detailed inspection shall be accomplished in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. The requirements of this paragraph may be accomplished prior to or concurrently with the requirements of paragraph (b)(2) of this AD.

(2) Install a main deck cargo door hinge that complies with the applicable requirements of Civil Air Regulations (CAR) part 4b, including fail-safe requirements, in accordance with a method approved by the Manager, Atlanta ACO.

(c) If any crack or discrepancy is detected during the detailed inspection required by either paragraph (a) or (b)(1) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta ACO.

Note 3: Accomplishment of the actions in accordance with Aeronautical Engineers Incorporated (AEI) Service Bulletin AEI01–01, Revision B, dated October 26, 2001, constitutes compliance with the requirements of paragraphs (b) and (c) of this AD.

Actions Addressing the Main Deck Cargo Door Systems

(d) Within 60 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) Supplement by inserting therein procedures to ensure that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane, and install any associated placards. The AFM revision procedures and installation of any associated placards shall be accomplished in accordance with a method approved by the Manager, Atlanta ACO.

(e) Within 36 months after the effective date of this AD, incorporate redesigned main deck cargo door systems (*e.g.,* warning/monitoring, power control, view ports, and means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked), including any associated procedures and placards, that comply with the applicable requirements of CAR part 4b and criteria specified in Appendix 1 of this AD; in accordance with

a method approved by the Manager, Atlanta ACO.

Note 4: The design data submitted for approval should include a Systems Safety Analysis and Instructions for Continued Airworthiness that are acceptable to the Manager, Atlanta ACO.

Actions Addressing the Main Deck Cargo Barrier

(f) Within 36 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first, install a main deck cargo barrier that complies with the applicable requirements of CAR part 4b, in accordance with a method approved by the Manager, Atlanta ACO.

Note 5: The maximum main deck total payload that can be carried is limited to the lesser of the approved cargo barrier weight limit, weight permitted by the approved maximum zero fuel weight, weight permitted by the approved main deck position weights, weight permitted by the approved main deck running load or distributed load limitations, or approved cumulative zone or fuselage monocoque structural loading limitations (including lower hold cargo).

Note 6: Installation of a Ventura Aerospace Inc. cargo barrier STC ST00848LA is an approved means of compliance with the requirements of paragraph (f) of this AD.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Effective Date

(i) This amendment becomes effective on September 19, 2002.

Appendix 1

Excerpt From an FAA Memorandum to the Director-Airworthiness and Technical Standards of ATA, Dated March 20, 1992

''(1) *Indication System:* (a) The indication system must monitor the closed, latched, and locked positions, directly.

(b) The indicator should be amber unless it concerns an outward opening door whose opening during takeoff could present an immediate hazard to the airplane. In that case the indicator must be red and located in plain view in front of the pilots. An aural warning is also advisable. A display on the master caution/warning system is also acceptable as an indicator. For the purpose of complying with this paragraph, an immediate hazard is defined as significant reduction in controllability, structural damage, or impact with other structures, engines, or controls.

(c) Loss of indication or a false indication of a closed, latched, and locked condition must be improbable.

(d) A warning indication must be provided at the door operators station that monitors the door latched and locked conditions directly, unless the operator has a visual indication that the door is fully closed and locked. For example, a vent door that monitors the door locks and can be seen from the operators station would meet this requirement.

(2) *Means to Visually Inspect the Locking Mechanism:* There must be a visual means of directly inspecting the locks. Where all locks are tied to a common lock shaft, a means of inspecting the locks at each end may be sufficient to meet this requirement provided no failure condition in the lock shaft would go undetected when viewing the end locks. Viewing latches may be used as an alternate to viewing locks on some installations where there are other compensating features.

(3) *Means to Prevent Pressurization:* All doors must have provisions to prevent initiation of pressurization of the airplane to an unsafe level, if the door is not fully closed, latched and locked.

(4) *Lock Strength:* Locks must be designed to withstand the maximum output power of the actuators and maximum expected manual operating forces treated as a limit load. Under these conditions, the door must remain closed, latched and locked.

(5) *Power Availability:* All power to the door must be removed in flight and it must not be possible for the flight crew to restore power to the door while in flight.

(6) *Powered Lock Systems:* For doors that have powered lock systems, it must be shown by safety analysis that inadvertent opening of the door after it is fully closed, latched and locked, is extremely improbable.''

Issued in Renton, Washington, on August 6, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20507 Filed 8–14–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–234–AD; Amendment 39–12860; AD 2002–16–21]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes Modified in Accordance with Supplemental Type Certificate ST00015AT

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger- to a cargo-carrying (''freighter'') configuration, that requires, among other actions, installation of a fail-safe hinge, redesigned main deck cargo door warning and power control systems, and 9g crash barrier. This amendment is prompted by the FAA's determination that the main deck cargo door hinge is not fail-safe; that certain main deck cargo door control systems do not provide an adequate level of safety; and that the main deck cargo barrier is not structurally adequate during an emergency landing. The actions specified by this AD are intended to prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane, including possible loss of flight control or severe structural damage; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants.

DATES: Effective September 19, 2002.

ADDRESSES: Information pertaining to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Michael O'Neil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5320; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger to a cargo-carrying (''freighter'') configuration was published in the **Federal Register** on November 12, 1999 (64 FR 61540). That action proposed to require, among other actions, installation of a fail-safe hinge, redesigned main deck cargo door warning and power control systems, and 9g crash barrier.

Background

For the convenience of the reader, certain excerpts and information, below, from the following sections of the preamble of the notice of proposed rulemaking (NPRM) are provided in this final rule: Discussion, Main Deck Cargo Door Hinge, Main Deck Cargo Door Systems, and Cargo Restraint Barrier.

Supplemental Type Certificate (STC) ST00015AT (held by Stambaugh Aviation Services) specifies a design for a main deck cargo door, associated cargo door cutout, door systems, and Class ''E'' cargo interior with a cargo barrier. As discussed in NPRM, Rules Docket No. 97–NM–80–AD (the final rule, AD 98–26–20, amendment 39–10963, was published in the **Federal Register** on January 12, 1999 (64 FR 2038)), which is applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger to a cargo-carrying (''freighter'') configuration, the FAA has conducted a design review of Boeing Model 727 series airplanes modified in accordance with STC ST00015AT and has identified several potential unsafe conditions. (Results of this design review are contained in ''FAA Freighter Conversion STC Review, Report Number 4, dated February 6, 1997,'' hereinafter referred to as ''the Design Review Report,'' which is included in the Rules Docket 97–NM–234–AD.) This NPRM proposes corrective action for three of those potential unsafe conditions that relate to the following three areas: main deck cargo door hinge, main deck cargo door systems, and main deck cargo barrier.

Main Deck Cargo Door Hinge

In order to avoid catastrophic structural failure, it has been a typical industry approach to design outward opening cargo doors and their attaching structure to be fail-safe (*i.e.,* designed so that if a single structural element fails, other structural elements are able to carry the redistributed load). Another potential design approach is safe-life, where the critical structure is shown by analyses and/or tests to be capable of withstanding the repeated loads of variable magnitude expected in service for a specific service life. Safe-life is usually not used on critical structure because it is difficult to account for manufacturing or in-service accidental damage. For this reason, plus the fact that none of the STC holders have provided data in support of this approach, the safe-life approach will not be discussed further regarding the design and construction of the main deck cargo door hinge.

Structural elements such as the main deck cargo door hinge are subject to severe in-service operating conditions that could result in corrosion, binding, or seizure of the hinge. These conditions, in addition to the normal operational loads, can lead to early and unpredictable fatigue cracking. If a main deck cargo door hinge is not a fail-safe design, a fatigue crack could initiate and propagate longitudinally undetected, which could lead to a complete hinge failure. A possible consequence of this undetected failure is the opening of the main deck cargo door while the airplane is in flight. Service experience indicates that the opening of a cargo door while the airplane is in flight can be extremely hazardous in a variety of ways including possible loss of flight control, severe structural damage, or rapid decompression, any of which could lead to loss of the airplane.

The design of the main deck cargo door hinge must be in compliance with Civil Air Regulations (CAR) part 4b, including CAR section 4b.270, which requires, in part, that catastrophic failure or excessive structural deformation, which could adversely affect the flight characteristics of the airplane, is not probable after fatigue failure or obvious partial failure of a single principal structural element. One common feature of a fail-safe hinge design is a division of the hinge into multiple segments such that, following failure of any one segment, the remaining segments would support the redistributed load.

The main deck cargo door installed in accordance with STC ST00015AT is supported by latches along the bottom of the door and a two-segment hinge along the top. This two-segment hinge is considered a critical structural element for this STC. A crack that initiates and propagates longitudinally along either segment of the hinge will eventually result in failure of the entire hinge, because the remaining segment of the hinge is unable to support the redistributed loads. Failure of the entire hinge can result in the opening of the main deck cargo door while the airplane is in flight.

On other Boeing Model 727 series airplanes modified in accordance with similar STCs, inspections revealed a number of fasteners with both short edge margins and short spacing in the cargo door cutout external doublers. Some edge margins were as small as one fastener diameter. Fasteners that are placed too close to the edge of a structural member or spaced too close to an adjacent fastener can result in inadequate joint strength and stress concentrations, which may result in fatigue cracking of the skin. If such defects were to exist in the structure of the door or the fuselage to which the main deck cargo door hinge is attached, the attachment of the hinge could fail, and consequently cause the door to open while the airplane is in flight.

Main Deck Cargo Door Systems

In early 1989, two transport airplane accidents were attributed to cargo doors coming open during flight. The first accident involved a Boeing 747 series airplane in which the cargo door separated from the airplane, and damaged the fuselage structure, engines, and passenger cabin. The second accident involved a McDonnell Douglas DC–9 series airplane in which the cargo door opened but did not separate from its hinge. The open door disturbed the airflow over the empennage, which resulted in loss of flight control and consequent loss of the airplane. Although cargo doors have opened occasionally without mishap during takeoff, these two accidents serve to highlight the extreme potential dangers associated with the opening of a cargo door while the airplane is in flight.

As a result of these cargo door opening accidents, the Air Transport Association (ATA) of America formed a task force, including representatives of the FAA, to review the design, manufacture, maintenance, and operation of airplanes fitted with outward opening cargo doors, and to make recommendations to prevent inadvertent cargo door openings while the airplane is in flight. A design working group was tasked with reviewing 14 CFR part 25.783 (and its accompanying Advisory Circular (AC) 25.783–1, dated December 10, 1986) with the intent of clarifying its contents and recommending revisions to enhance future cargo door designs. This design group also was tasked with providing specific recommendations regarding design criteria to be applied to existing outward opening cargo doors to ensure that inadvertent openings would not occur in the current transport category fleet of airplanes.

The ATA task force made its recommendations in the ''ATA Cargo Door Task Force Final Report,'' dated May 15, 1991 (hereinafter referred to as ''the ATA Final Report''). On March 20, 1992, the FAA issued a memorandum to the Director-Airworthiness and Technical Standards of ATA (hereinafter referred to as ''the FAA Memorandum''), acknowledging ATA's recommendations and providing additional guidance for purposes of assessing the continuing airworthiness of existing designs of outward opening

doors. The FAA Memorandum was not intended to upgrade the certification basis of the various airplanes, but rather to identify criteria to evaluate potential unsafe conditions identified on in-service airplanes. Appendix 1 of this AD contains the specific paragraphs from the FAA Memorandum that set forth the criteria to which the outward opening doors should be shown to comply.

Applying the applicable requirements of CAR part 4b and design criteria provided by the FAA Memorandum, the FAA has reviewed the original type design of major transport airplanes, including Boeing 727 airplanes equipped with outward opening doors, for any design deficiency or service difficulty. Based on that review, the FAA identified unsafe conditions and issued, among others, the following ADs:

- For certain McDonnell Douglas Model DC–9 series airplanes: AD 89–11–02, amendment 39–6216 (54 FR 21416, May 18, 1989);
- For all Boeing Model 747 series airplanes: AD 90–09–06, amendment 39–6581 (55 FR 15217, April 23, 1990);
- For certain McDonnell Douglas Model DC–8 series airplanes: AD 93–20–02, amendment 39–8709 (58 FR 471545, October 18, 1993);
- For certain Boeing Model 747–100 and –200 series airplanes: AD 96–01–51, amendment 39–9492 (61 FR 1703, January 23, 1996); and
- For certain Boeing Model 727–100 and –200 series airplanes: AD 96–16–08, amendment 39–9708 (61 FR 41733, August 12, 1996).

Using the criteria specified in the ATA Final Report and the FAA Memorandum as evaluation guides, the FAA conducted an engineering design review and inspection of an airplane modified in accordance with STC ST00015AT (held by Stambaugh Aviation Services). The FAA identified a number of design features of the main deck cargo door systems of this STC that are unsafe and do not meet the criteria specified in the ATA Final Report and the FAA Memorandum. The FAA design review team determined that the design data of this STC did not include an adequate safety analysis of the main deck cargo door systems.

For airplanes modified in accordance with STC ST00015AT, the FAA considers the following three specific design deficiencies of the main deck cargo door systems to be unsafe:

1. Means To Visually Inspect the Locking Mechanism

The three view ports installed in accordance with STC ST00015AT are located for viewing locking pins at the No. 2, No. 4, and No. 6 latch positions of the main deck cargo door. These view ports are intended to allow the flight crew to conduct a visual inspection of the cargo door locking mechanism to determine whether or not the cargo door is closed, latched, and locked. The view ports are used in conjunction with the door warning system and should provide a suitable back-up for confirming that the door is closed, latched and locked in the event that the main deck cargo door warning system malfunctions.

However, during the FAA design review, it was determined that these view ports are installed at an angle; therefore, a visual inspection of the locking pins is not possible. Therefore, the FAA finds that these view ports cannot be used to confirm that the door is closed, latched, and locked when the cargo door warning system malfunctions.

As discussed in the ATA Final Report and the FAA Memorandum, there must be a means of directly inspecting each lock or, at a minimum, the locks at each end of the lock shaft of certain designs, such that a failure condition in the lock shaft would be detectable.

2. Means To Prevent Pressurization to an Unsafe Level

Boeing 727–200 airplanes modified in accordance with STC ST00015AT are configured to utilize two outward opening vent doors for the purpose of preventing pressurization of the airplane to an unsafe level in the event the main deck cargo door is not closed, latched, and locked. Because the vent door openings are approximately six inches in diameter, the opening area may be insufficient to prevent pressurization of the airplane to an unsafe level in the event the main deck cargo door is not closed, latched, and locked. Paragraph (1)(d) of Appendix 1 describes the requirement that a warning indication be provided to the door operators station to monitor the door condition. Another function of the vent doors, if properly designed, would be to provide such a visual warning indication. If the vent door is open, the door operator will know the door is not closed, locked, and latched. The vent doors in this design are not spring loaded to the fully open position. As a result, they may appear to be closed when in fact they are not. Rather than provide a positive indication of a safe door, they can create a false indication of the door status. Therefore, the position of these vent doors cannot be used to indicate that the main cargo door is closed, latched, and locked, nor that there is a malfunction in the vent door system.

- ''Failure Mode and Effects Analysis (FMEA) for B727–200 Cargo Door Modifications,'' dated November 20, 1991, was prepared by the STC holder as a qualitative safety analysis for the vent door system of this STC. The FMEA indicates that the system has single point failures of the vent door systems that can result in a false indication that the door is safe. The presence of single point failures reflects that the system does not meet the standard established in the ATA Final Report and FAA memorandum that a false indication of a closed, latched, and locked condition is improbable.

3. Powered Lock Systems

The main deck cargo door actuation control system for STC ST00015AT utilizes a powered lock system. The main deck cargo door control system for STC ST00015AT that utilizes electrical interlock switches is designed to remove door control power (electrical and hydraulic) prior to flight and to prevent inadvertent door openings. The design shows the likelihood that latent and/or single point failures can restore or continue to allow power to the door controls and cause inadvertent door openings. The failure modes may be found in the electrical portion of the door control panel, which, in turn, activates the door control hydraulics. The potential for the occurrence of these failure conditions is increased by the harsh operating environment of freighter airplanes. Door system components are routinely exposed to precipitation, dirt, grease, and foreign object intrusion, all of which increase the likelihood of damage. As a result, wires, switches, and relays have a greater potential to fail or short circuit in such a way as to allow the cargo door to be powered open without an operator's command and regardless of electrical interlock positions.

A systems safety analysis would normally evaluate and resolve the potential for these types of unsafe conditions. However, the design data for STC ST00015AT includes a systems safety analysis that is insufficient to show that an inadvertent opening of the main deck cargo door after it is fully closed, latched, and locked is extremely improbable. The need for a system safety analysis is identified in the ATA Final Report and the FAA Memorandum.

Cargo Barrier

In order to ensure the safety of occupants during emergency landing conditions, the FAA first established in

1934, a set of inertia load factors used to design the structure for restraining items of mass in the fuselage. Because the airplane landing speeds have increased over the years as the fleet has transitioned from propeller to jet design, inertia load factors were changed as specified in CAR part 4b.260. Experience has shown that an airplane designed to this regulation has a reasonable probability of protecting its occupants from serious injury in an emergency landing. The 727 passenger airplane was designed to these criteria which specified an ultimate inertia load requirement of 9g in the forward direction. This criteria was applied to the seats and structure restraining the occupants, including the flight crew, as well as other items of mass in the fuselage.

When the 727 passenger airplane is converted to carry cargo on the main deck, a cargo barrier is required, since most cargo containers and the container-to-floor attaching devices are not designed to withstand emergency landing loads. In fact, the FAA estimates that the container-to-floor attaching devices will only support approximately 1.5g's to 3g's in the forward direction. Without a 9g cargo barrier, it is probable that the loads associated with an emergency landing would cause the cargo to become unrestrained and impact the occupants of the airplane, which could result in serious injury or death.

The structural inadequacy of the cargo barrier was evident to the FAA during its review in October 1996 of a Boeing 727 modified in accordance with STC ST00015AT. The observations revealed that the design of the cargo barrier floor attachment and circumferential supporting structure does not provide adequate strength to withstand the 9g forward inertia load generated by the main deck cargo mass, nor does it provide a load path to effectively transfer the loads from the cargo barrier to the fuselage structure of the airplane. These observations are supported by data contained in ''ER 2785, Structural Substantiation of the 50k 9g Bulkhead Restraint System in Support of STC SA1543SO PN 53–1292–401 for the 9g Bulkhead 53–1980–300 Assembly with Upper Attachment Structure, Lower Attachment Structure, Floor Shear Web Structure, Seat Track Splice Fittings, Seat Tracks, and Seat Track Splices,'' dated September 29, 1996, by M.F. Daniel. Although this report was specific to STC SA1543SO, the FAA has determined that the data are applicable to airplane modified in accordance with STC ST00015AT because the design principles for attachment of the barriers in both STCs are the same. The report reveals that structural deficiencies were found in the net attach plates and floor attachment structure of the cargo barrier. The data show large negative margins of safety, which indicate that the inertia load capability of the cargo barrier is closer to 2g than the required 9g in the forward direction. From these analyses, it is evident that the cargo barrier would not be capable of preventing serious injury to the occupants during an emergency landing event with the full allowable cargo load.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The FAA has received comments in response to the four NPRM actions (*i.e.,* Rules Dockets 97–NM–232–AD, 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD) that address the same subjects described above for four different sets of cargo modification STCs. Some of these comments addressed only one NPRM, while others addressed all four. Because in most cases the issues raised by the commenters are generally relevant to all four NPRMs, each final rule includes a discussion of all comments received.

Definition of Detailed Visual Inspection

One commenter provided Boeing's definition of a detailed visual inspection. The commenter requests that the FAA approve Boeing's definition as meeting the ''detailed visual inspection'' definition specified in Note 2 of the NPRM. The commenter states that it has incorporated Boeing's definition into its General Maintenance Manual (GMM), and that it is performing the detailed visual inspection of the main deck cargo door hinge in accordance with the GMM. The commenter also states that acceptance of the existing Boeing's definition will allow for work standardization and consistency.

The FAA partially concurs. The FAA concurs that, for the purpose of this AD, the definition provided by the commenter satisfies the intent of the definition contained in Note 2 of this AD. The detailed inspection definition specified in Note 2 of this AD is a standard definition that is used in all ADs that require a detailed inspection. Therefore, the FAA finds that no change to Note 2 of the final rule is necessary. However, for clarification purposes, the FAA has revised all references to a ''detailed visual inspection'' in the NPRM to ''detailed inspection'' in the final rule.

Main Deck Cargo Door Hinge

Two commenters request that the compliance time for accomplishing the detailed visual inspection required by paragraph (a) of the NPRM be revised. One commenter states that the compliance time should include a threshold of ''prior to the accumulation of five years since accomplishment of the original conversion.'' The commenter states that operators of newly modified airplanes should not have to accomplish the detailed visual inspection required by paragraph (a) of the NPRM because it would be unlikely that brand new hinges would develop cracks within 250 flight cycles after being installed. The other commenter states that the compliance time should be revised to ''at the next scheduled 'B' check, or 350 cycles after the effective date of the NPRM, whichever occurs first.'' The commenter states that such an extension would allow the inspection to be accomplished during a regularly scheduled ''B'' check and would not be disruptive of normal maintenance inspection scheduling.

The FAA partially concurs. The FAA does not concur that the compliance time should be extended from 250 flight cycles to 350 flight cycles. In developing an appropriate compliance time for the detailed inspection required by paragraph (a) of this AD, the FAA considered the degree of urgency associated with addressing the subject unsafe condition; the results from an FAA report, ''Damage Tolerance Analysis of 727 Cargo Door Hinge,'' dated October 10, 1997; and the practical aspect of accomplishing the required inspection within an interval of time that parallels the typical ''A'' check scheduled maintenance interval for the majority of affected operators.

However, the FAA concurs with the commenter about the unlikelihood of a newly modified airplane developing cracks within 250 flight cycles since installation. Based on the referenced FAA damage tolerance report, the FAA finds that it is unlikely that a significant crack would occur in the hinge within 4,000 flight cycles since installation. Therefore, the FAA finds that operators must accomplish the detailed inspection ''prior to accumulation of 4,000 flight cycles since accomplishment of the installation of the main deck cargo door, or within 250 flight cycles after the effective date of this AD, whichever occurs later.'' The FAA has revised paragraph (a) of the final rule accordingly.

One commenter requests that a high frequency eddy current (HFEC) inspection be required in paragraph (a) of the NPRM in lieu of the detailed visual inspection. The commenter states that an HFEC inspection should be used because there are no proposed repetitive inspections and a detailed visual inspection can only detect limited crack size.

The FAA does not concur. The FAA finds that accomplishment of the detailed inspection required by paragraph (a) of this AD, in conjunction with the detailed inspection required by paragraph (b)(1) of this AD and the modification required by paragraph (b)(2) of this AD, will ensure the integrity of the door and fuselage structure to which the hinge is attached. Therefore, no change to the final rule is necessary in this regard.

Two commenters request that the FAA revise paragraph (a) of the NPRM to specify that operators will be given ''credit'' for having previously accomplished the proposed detailed visual inspection of the main deck cargo door hinge in accordance with a method approved by the appropriate Aircraft Certification Office (ACO) prior to the effective date of the final rule. One commenter states that operators who accomplished the subject inspection before the effective date of this AD should not be penalized by being forced to reinspect after the effective date of this AD.

The FAA does not consider that a change to the final rule is necessary to give operators such credit. Operators are given credit for work previously performed by means of the phrase in the ''Compliance'' section of the AD that states, ''Required as indicated, unless accomplished previously.'' Therefore, in the case of this AD, if the required detailed inspection has been accomplished prior to the effective date of this AD in accordance with a method approved by the FAA, this AD does not require that it be repeated.

One commenter requests that the detailed visual inspection required by paragraph (b)(1) of the NPRM be accomplished at the next ''C'' check after five years have elapsed since the airplane was converted from a passenger-to a cargo-carrying (''freighter'') configuration. The commenter also states that a ''C'' check would allow operators to accomplish the inspection during a heavy maintenance visit.

The FAA does not concur. The FAA finds that accomplishment of the detailed inspection required by paragraph (b)(1) of this AD prior to or concurrently with requirements of paragraph (b)(2) of this AD (*i.e.,* installation of a main deck cargo door hinge) will ensure the structural integrity of mating surfaces of the hinge. However, paragraph (g) of this AD does provide affected operators the opportunity to apply for an adjustment of the compliance time if data are presented to justify such an adjustment.

One commenter requests that the detailed visual inspection required by paragraph (b)(1) of the NPRM apply only to airplanes that have been in service for five or more years since installation of the cargo door, because the likelihood of damage increases with time in service. The commenter states that the compliance time specified in paragraph (b) of the NPRM should start from the date that the modification was installed on the airplane.

The FAA does not concur. The FAA finds that the potential for cracks in the hinge is primarily related to flight cycles (*i.e.,* number of fuselage pressure cycles) and, to a lesser extent, calendar time. Therefore, the FAA has determined that the compliance time specified in paragraph (b) of this AD should be related to flight cycles, not calendar time. No change to the final rule is necessary in this regard.

One commenter requests that the NPRM, Rules Docket 97–NM–234–AD, be revised to reference Kitty Hawk Service Bulletin KHA 727–004, Revision A, as an appropriate source of service information for accomplishing the detailed visual inspection required by paragraphs (a) and (b)(1) of the NPRM and the modification required by paragraph (b)(2) of that NPRM. The commenter states that this service bulletin has been submitted to the FAA for approval and should be approved by the FAA prior to the issuance of the NPRM.

Another commenter states that it has developed and submitted to the FAA for approval a modification that segments the hinge on existing cargo converted airplanes and installs a segmented hinge on the new conversion. From this comment, the FAA infers that the commenter is requesting that the NPRM, Rules Docket 97–NM–233–AD, be revised to reference this modification as a terminating action for the requirements of paragraphs (b) and (c) of that NPRM.

The FAA concurs with the commenters' requests to reference service bulletins that constitute compliance with the requirements of paragraphs (b) and (c) of ADs, Rules Dockets 97–NM–233–AD and 97–NM–234–AD. The FAA has reviewed and approved Kitty Hawk Service Bulletin KHA 727–004, Revision B, dated March 3, 1999, as opposed to the Revision A mentioned by one of the commenters. The FAA also has reviewed and approved Aeronautical Engineers Incorporated (AEI) Service Bulletin AEI01–01, Revision B, dated October 26, 2001. These service bulletins describe the following procedures:

1. Visual inspection of all areas of the hinge for cracks or other signs of damage;
2. Inspection of the mating surfaces of the main deck cargo door hinge and the external doubler for discrepancies (*i.e.,* scratches, gouges, or corrosion);
3. Repair of any crack, damage, or discrepancy, if necessary; and
4. Installation of a main deck cargo door hinge that complies with the applicable requirements of CAR part 4b, including fail-safe requirements.

In addition, the FAA has reviewed and approved Federal Express E.O. Revision Record 7–5230–7–5000, Revision B, release date December 18, 2001, and Pemco Service Bulletin 727–53–0006, Revision 1, dated December 4, 2001. The procedures in these service bulletins are similar to those described in AEI Service Bulletin AEI01–01, Revision B, and Kitty Hawk Service Bulletin KHA 727–004, Revision B.

The FAA finds that accomplishment of the actions specified in the four service bulletins described previously constitutes compliance with the requirements of paragraphs (b) and (c) of final rules, Rules Dockets 97–NM–232–AD, 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD; as applicable. Therefore, the FAA has revised those final rules to include a new note that references the subject service bulletins as a source of service information for accomplishing the actions required by paragraphs (b) and (c) of those final rules; as applicable.

One commenter requests that a subparagraph be added to paragraph (b) of the NPRM to require that the detailed visual inspection required by paragraph (b)(1) of the NPRM be accomplished just prior to final hinge installation during the process of converting an airplane from a passenger- to cargo-carrying (''freighter'') configuration. The commenter states that this revision would eliminate its concerns about the installation defects that could cause future problems.

The FAA does not concur. The FAA finds that any FAA-approved corrective action that satisfies the requirements of paragraph (b)(2) of this AD will also address the installation of a hinge during the process of converting a Boeing Model 727 series airplane from a passenger- to a cargo-carrying (''freighter'') configuration. Normally,

good manufacturing procedures during production should preclude the necessity for the inspection. No change to the final rule is necessary in this regard.

One commenter notes that paragraph (b)(2) of the NPRM references CAR part 4b. The commenter asks, ''If the FAA, as evidenced by the awarding of an STC, certified the cargo door hinge, how can the current hinge not meet CAR requirements?'' The commenter also asks, ''Wasn't the original STC determined to be in compliance with those requirements? If so, what specifically needs to be done to eliminate the FAA safety concerns about hinges that do not appear to have a problem?'' The commenter suggests that paragraph (b)(2) of the NPRM be revised to require STC holders to design and make available an acceptable replacement hinge. The commenter states that this suggestion should be a condition for STC holders to continue to hold their STC approval.

From the commenter's questions, the FAA infers that the commenter believes a main deck cargo door hinge with an approved STC is compliant with the requirements of CAR part 4b. The FAA finds that clarification is necessary. Generally, there is a presumption by operators that demonstrations of compliance with the requirements of CAR part 4b is a prerequisite for granting an STC. However, the applicant for any design approval is responsible for compliance with all applicable FAA regulations. The FAA has the discretion to review or otherwise evaluate the applicant's compliance to the degree the FAA considers appropriate in the interest of safety. The normal certification process allows for the review and approval of data by FAA designees. Consequently, the FAA office responsible for the certification of an airplane or modification to an airplane or an aeronautical appliance may not review all details regarding compliance with the appropriate regulations. As explained in the NPRM, the FAA has conducted design reviews and airplane inspections and has identified a potential unsafe condition that relates to the main deck cargo door hinge.

In addition, the FAA does not concur with the commenter's request to revise paragraph (b)(2) of the AD to require STC holders to design and make available an acceptable replacement hinge. The FAA finds that such a requirement is unnecessary, because as previously discussed, the FAA has revised this final rule to include a new note that references the applicable STC holder's service bulletin as a source of service information for accomplishing the actions required by paragraphs (b) and (c) of this final rule.

Main Deck Cargo Door Systems

One commenter requests that the compliance time for accomplishing the Airplane Flight Manual (AFM) revisions required by paragraph (d) of the NPRM be revised from ''within 60 days after the effective date of this AD'' to ''within 60 days after submission of the procedures to the FAA.'' The commenter states that operators should be able to design revisions to the AFM within the proposed 60 days. However, the commenter believes that the Atlanta ACO will not be able to approve every one of those AFM Supplements within that time period.

The FAA does not concur. Since the release of the NPRM, some of the affected STC holders and operators have already developed AFM procedures acceptable to the FAA. The FAA finds that a 60-day compliance time is sufficient to allow the remaining operators and STC holders to develop revisions to the applicable AFMs and their supplements and for the Atlanta ACO to review and approve those AFM revisions.

One commenter submitted procedures for accomplishing the requirements of paragraph (d) of NPRM, Rules Docket 97–NM–232–AD. The commenter requests that the FAA approve those procedures prior to issuance of the final rule and include those procedures in the final rule. The commenter states that it has completed a Safety Assessment Report for each of the door configurations currently operating in its fleet. The commenter believes the results of the report demonstrate that it is ''extremely improbable'' that the door will inadvertently open in flight for any reason. Although the analysis does not demonstrate compliance with the ''extremely improbable'' standard, the commenter states that for a limited time of 36 months the door system, as installed, provides a sufficient level of safety to be considered acceptable with no modification or change in operational procedures.

The FAA partially concurs. In order to gain a better understanding of the referenced Safety Assessment Report, the FAA had a telecon with the commenter on February 19, 2000, to discuss a series of questions, which were provided to the commenter prior to the telecon, about the report. (The minutes of this telecon are included in Rules Docket 97–NM–232–AD.) In addition to the information that it provided at the telecon, the commenter also provided an analysis of the Safety Assessment Report in a letter, dated February 16, 2000, and a revised table of the Safety Assessment Report in a letter, dated March 6, 2000. The analysis in these letters provided, for a variety of failure modes, the probability of the main deck cargo door not being in the closed, latched, and locked condition prior to dispatch. The analysis showed that the warning systems of the main deck cargo door and the means to prevent pressurization if the door is not closed, latched, and locked, only meet some of the requirements of CAR § 4b.606 and criteria specified in FAA memorandum, dated March 20, 1992 (referenced in the preamble of the NPRM). The commenter also provided Revision 16 of its Boeing B–727 Flight Manual, which further clarifies a change in the procedures for verifying that the main deck cargo door is closed, latched, and locked.

In light of the clarification provided by the commenter, the FAA concurs that the procedures submitted by the commenter provide an adequate level of safety until the requirements of paragraph (e) of this AD have been accomplished, considering the level of probability of occurrence of certain failures of the warning systems of the main deck cargo door and strict adherence to the door checking procedures and associated training requirements. Since issuance of the NPRM, the FAA has reviewed and approved Federal Express Service Bulletin FX727–2001–5230–01, dated July 30, 2001, which describes procedures for ensuring that the main deck cargo door is closed, latched, and locked prior to dispatch. Accomplishment of these actions constitutes compliance with the requirements of paragraph (d) of final rule, Rules Docket 97–NM–232–AD. Therefore, the FAA has revised the final rule, Rules Docket 97–NM–232–AD, to include a new note that references the subject service bulletin as a source of service information for accomplishing the actions required by paragraph (d) of that final rule.

One commenter provided procedures for accomplishing the requirements of paragraph (d) of NPRM, Rules Docket 97–NM–233–AD, on airplanes modified in accordance with STC SA1368SO, on which a vent door has not been installed, and on airplanes modified in accordance with STC SA1797SO, on which a vent door has been installed. The commenter states that its procedures will ensure that the main deck cargo door is properly closed, latched, and locked prior to flight.

From this comment, the FAA infers that the commenter is requesting that the FAA approve its procedures as an

acceptable means of compliance to the requirements of paragraph (d) of the final rule, Rules Docket 97–NM–233–AD. The FAA does not concur. The FAA finds that any proposed operating procedure must have sufficient validation and verification that the procedures are realistic and designed to minimize possible human error. The procedure also must provide for adequate checks and balances in the event the procedure is not strictly followed. In addition, the commenter did not provide any validation of the operating procedure or results of a safety analysis. However, the FAA may approve requests for an alternative method of compliance (AMOC) under the provisions of paragraph (g) of AD, Rules Docket 97–NM–233–AD, if sufficient data are submitted to substantiate that such a operating procedure would provide an acceptable level of safety.

One commenter provided procedures for accomplishing the requirements of paragraph (d) of NPRM, Rules Docket 97–NM–234–AD. In support of its procedures, the commenter states, among other items, that an internal direct visual inspection of the latching and locking system is not possible on Model 727 series airplanes affected by that NPRM because the latching and locking systems are covered by a protective guard/cover that prevents direct viewing of these systems. Removing these covers would expose the latching and locking systems to possible foreign object damage (FOD) or damage from shifting freight. The commenter states that this condition is far more dangerous than a failure of the latching and locking systems. The commenter also states that most of the affected airplanes are equipped with flip up sill protectors, which further block the visibility of the bottom of the cargo door area (latch and lock area). The commenter concludes that a visual inspection of the latching and locking mechanisms is not appropriate for the airplane type and would create severe operational disruption with no benefit.

The FAA concurs with the commenter's conclusion that a visual inspection of the latching and locking mechanisms is not appropriate for accomplishing the requirements of paragraph (d) of final rule, Rules Docket 97–NM–234–AD. The FAA notes that paragraph (d) of that final rule does not specifically require a visual inspection of the locking mechanisms of the main deck cargo door after the door is closed, as suggested by the commenter. Since issuance of the NPRM, the FAA has reviewed and approved Kitty Hawk Service Bulletin KHA 727–008, dated January 7, 2000, which describes procedures for ensuring that the main deck cargo door is closed, latched, and locked prior to dispatch. These procedures are identical to those procedures provided by the commenter. Accomplishment of these actions constitutes compliance with the requirements of paragraph (d) of final rule, Rules Docket 97–NM–234–AD. Therefore, the FAA has revised final rule, Rules Docket 97–NM–234–AD, to include a new note to reference the subject service bulletin as a source of service information for accomplishing the actions required by paragraph (d) of that final rule.

One commenter states that the requirements for ''a means to prevent pressurization to an unsafe level'' and ''direct visual examination of all locks'' are not included in the certification basis of Model 727 series airplanes and should not be required for the interim action.

From this comment, the FAA infers that the commenter is referring to the interim actions required by paragraph (d) of the NPRM and to extracts from Appendix 1 of this AD, which sets forth the industry-accepted criteria to which the outward opening doors must be shown to comply per paragraph (e) of the NPRM. The FAA does not concur. The commenter has misinterpreted the requirements of paragraph (d) of this AD. Paragraph (d) of this AD requires procedures to ensure that all power is removed from the main deck cargo door prior to dispatch and to ensure that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane. This paragraph does not specify or limit what means or actions would be acceptable to the FAA. Operators could submit a means to prevent pressurization to an unsafe level and direct visual inspection of the locks as possible ways to ensure that the main deck cargo door is secure, in accordance with paragraph (d) of this AD. In addition, to comply with paragraph (e) of this AD, the criteria specified in Appendix 1 of this AD must be applied, irrespective of the certification basis of the airplane. Therefore, no change to the final rule is necessary in this regard.

One commenter requests that the proposed compliance time specified in paragraph (e) of the NPRM be revised from ''within 36 months after the effective date of this AD'' to ''at the next 'C' check after the modifications are approved by the Manager, Atlanta ACO.'' The commenter states that such a compliance time would make everybody (*i.e.,* designer, operator, and FAA) share responsibility for time delays encountered during the modification design and approval process.

The FAA does not concur. Since issuance of the NPRM, the FAA has reviewed and approved two modifications (*i.e.,* National Aircraft Services, Inc., (NASI) STC ST01438CH and Pemco STC ST01270CH) as acceptable means for compliance with the requirements of paragraph (e) of final rules, Rules Dockets 97–NM–232–AD and 97–NM–235–AD; as applicable. Therefore, the FAA has revised the final rules, Rules Dockets 97–NM–232–AD and 97–NM–235–AD, to include a new note to reference the applicable STC as a source of service information for accomplishing the requirements of paragraph (e) of those final rules. The FAA finds that a 36-month compliance time for accomplishing the action specified in paragraph (e) of those final rules is not only sufficient for the design of the corrective actions, but also provides adequate time for operators to schedule the installation within an interval of time that parallels a heavy maintenance visit. However, under the provisions of paragraph (g) of final rules, Rules Dockets 97–NM–232–AD and 97–NM–235–AD, the FAA may approve requests for an adjustment of compliance times if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Main Deck Cargo Barrier

One commenter requests that, before issuance of the final rule, industry and the FAA form a review team to find a way of lowering the costs associated with accomplishing the proposed installation of a 9g crash barrier. The commenter suggests that lower costs could be achieved by fixing the existing barrier (*e.g.,* the loads could be spread by the addition of structural reinforcement attachment angles) or designing a new barrier. The commenter states that the Ventura Aerospace, Inc., cargo barrier STC ST00848LA, which is an approved means of compliance with the requirements of paragraph (f) of NPRMs, Rules Dockets 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD, is an adequate barrier; however, the parts and installation cost estimates for the installation in those NPRMs are too low. The commenter gave examples of various actions and associated work hours that would be necessary to accomplish the proposed installation of the Ventura 9g crash barrier.

The FAA does not concur with the commenter that a review team is necessary, and that the cost estimates of NPRMs, Rules Dockets 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD,

for accomplishing the installation of a main deck cargo barrier are too low. The FAA acknowledges that installation of a Ventura Aerospace, Inc., cargo barrier STC ST00848LA is an approved means of compliance with the requirements of paragraph (f) of final rules, Rules Dockets 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD. However, the cost estimates in the subject NPRMs were not specifically for installation of the subject Ventura 9g crash barrier, but were for installation of a 9g crash barrier that complies with the applicable requirements of CAR part 4b. The installation cost estimate of the NPRMs was provided to the FAA by Pemco based on the best data available to date.

The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur ''incidental'' costs in addition to the ''direct'' costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up; planning time; or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. Furthermore, because the FAA generally attempts to impose compliance times that coincide with operators' scheduled maintenance, the FAA considers it inappropriate to attribute the costs associated with aircraft ''downtime'' to the cost of the AD, because, normally, compliance with the AD will not necessitate any additional downtime beyond that of a regularly scheduled maintenance visit.

Public Meeting

Several commenters request that the FAA hold a public meeting prior to the issuance of the final rule in the event that the FAA does not find their procedures acceptable for compliance with the requirements of paragraph (d) of the NPRM. The commenters state that such a meeting would provide a forum for productive face-to-face discussions similar to the process used by industry's B–727 Working Group.

The FAA does not concur. As discussed previously, the FAA has accepted some of the procedures submitted by the commenters. Also, in consideration of the differing configurations of the main deck cargo door systems between the various affected STCs, a public meeting to discuss the AD may be significantly restricted in some cases because of the proprietary design and data issues. However, the FAA is available to discuss any particular proposal for procedures specific to the airplane configuration with each of the affected STC holders or operators. Further, the FAA may approve requests for an AMOC under the provisions of paragraph (g) of this AD if sufficient data are submitted to substantiate that such a procedure would provide an acceptable level of safety. Therefore, the FAA finds that no public meeting is necessary.

Issue Separate ADs

One commenter requests that the NPRM be split into separate ADs for each issue—main deck cargo door hinge, main deck cargo door systems, and 9g crash barrier. The commenter states that multiple actions addressed by a single AD make managing the actions very unwieldy and complicated.

The FAA does not concur. The FAA is not convinced that separate ADs for each issue would resolve the complexity of this AD. The FAA has determined that a less burdensome approach is to issue only one AD for each STC holder that addresses the potential unsafe conditions that relate to the main deck cargo door hinge, main deck cargo door systems, and main deck cargo barrier. In addition, operators have already initiated actions to accomplish the requirements of this AD without apparent complications.

ACO Approval

One commenter requests that the actions required by the NPRM that must be accomplished in accordance with a method approved by the Manager, Atlanta ACO, be approved by the Manager, Transport Airplane Directorate. The commenter states that the affected Boeing Model 727 series airplanes are not small airplanes, and that the approving authority should be someone in an ACO from the Transport Airplane Directorate who understands structural repairs of transport category airplanes.

The FAA does not concur. Since the subject STCs were issued by the Atlanta ACO, that office has certificate responsibility for the airplanes affected by this AD. The Atlanta ACO is most cognizant of the design details of the subject STCs, and therefore, more able to address each operator's specific issues for complying with paragraph (d) of this AD. The Manager of the Atlanta ACO will coordinate the review of the submittals with the Transport Airplane Directorate, which has established a team consisting of members from several ACOs to review all requests in accordance with paragraphs (b)(1), (b)(2), (c), (d), (e), and (f) of this AD.

Principal Maintenance Inspector (PMI) or Principal Operations Inspector (POI) Approval

One commenter requests that the FAA allow the individual operator's local PMI or POI to approve the AFM procedures for ensuring that the main deck cargo door is closed, latched, and locked required by the NPRM, or provide an option in the NPRM that allows the procedures to be added to the airplane operator manual (AOM), if applicable. The commenter states that such approval would ensure that the approval process is accomplished quickly.

The FAA does not concur. Paragraph (d) of this AD requires comprehensive engineering evaluation in consideration of the applicable requirements of CAR part 4b and the criteria specified in Appendix 1 of this AD. Consequently, the evaluation must be conducted by the Manager, Atlanta ACO, to determine an acceptable level of safety. The PMI or POI for the air carrier is normally not familiar with all the design considerations provided by the requirements of CAR part 4b and Appendix 1 of this AD.

Cost

One commenter requests that an industry/FAA team determine a less costly method to fix the existing barriers to satisfy the FAA's concerns. For example, the loads could be spread by the addition of structural reinforcement attachment angles. The commenter states that replacing the barrier is an extreme measure, and that there must be some kind of structural additions that could be made to the existing barrier to make it acceptable at a much lower cost.

The FAA partially concurs. The STC holders and operators are certainly free to form an industry team to find common solutions. However, the FAA's reason for participation would not be for the purpose of developing a less costly design, but rather to ensure that the final design is compliant with the applicable regulations.

One commenter requests that the FAA require STC holders to design the correction for the NPRM as a warranty issue. The commenter states that small operators, who do not have in-house engineering capability, will be at a great disadvantage when attempting to design remedies for this NPRM. The commenter also states that this NPRM places a substantial financial and operational burden on ''small entities'' just from the standpoint of not having a remedy already designed and approved.

The FAA does not concur. Any warranty agreements between the

operator and an STC holder are not the responsibility of the FAA. The burden on small entities is addressed in the Regulatory Flexibility Analysis and Summary and Regulatory Sections of this AD.

Descriptive Language of Preamble

One commenter states that it found the following four factual inaccuracies in the NPRM, Rules Docket 97–NM–232–AD, and requests that the FAA correct them.

1. The commenter notes that paragraph six under the heading ''Main Deck Cargo Door System'' reads, ''* * * However, the FAA is aware of two events in which the main deck cargo door opened during flight. These events occurred on FedEx passenger/freighter conversion STC's in October 1996, and March 1995.'' The commenter states that it does not have any information or records indicating that the main deck cargo door opened in flight in October 1996 or March 1995. In the March 1995 incident, the commenter contends that the door, upon landing, was found to be closed and locked, and that the lock bar was found to be in the unlocked position. The commenter states that it found a control valve electrical connection of the main deck cargo door to be disconnected, and that the door operated normally once it was reconnected.

2. The commenter disagrees with the sentence under the heading ''1. Indication System'' in the preamble of the NPRM that reads, ''Both of these lights indicate the status of the cargo door latch and lock positions, but do not indicate either the door open or closed status.'' The commenter states that its system does monitor and indicate the door closed status. If the door closed switch is not depressed, the light will stay illuminated, even if the door lock latches have rolled and the lock bar has moved into place.

3. The commenter notes that paragraph two under the heading ''2. Means to Visually Inspect the Locking Mechanism'' reads, ''* * * Although an indicator flag attached to the lock shaft can be seen through the view port when the shaft is in the ''locked'' position, a failure between the shaft and the pins could go undetected, because this flag is attached to the lock shaft and not the actual lock pins.''

The commenter states that the flag is attached to the lock bar on Model 727–100 series airplanes. The lock plates are also bolted directly to the lock bar (no linkages). Therefore, the commenter contends that both the flag and lock plates become integrated parts of the lock bar.

In addition, the commenter states that the flag is attached to a lock pin on Model 727–200 series airplanes, and that the lock pin linkage does not have springs or an actuator attached to it. The commenter also contends that movement would have to be transmitted through the lock bar. The commenter further states that the stress analysis for Model 727–200 series airplanes shows high margins of safety in yield, bending, and shear for the locking hinges and fasteners.

4. The commenter notes that paragraph three under the heading ''3. Means to Prevent Pressurization to an Unsafe Level'' in the preamble of the NPRM reads, ''Boeing 727–100 airplanes modified in accordance with the subject STC's have no means of preventing pressurization in the event that the main deck cargo door is not closed, latched, and locked, and therefore, have a higher risk of a cargo door opening while the airplane is in flight and possible loss of the airplane.'' The commenter states that the system used on Model 727–100 series airplanes has a relay that drives the ground venturi system, which in turns opens the outflow valve when the main deck cargo door is not closed and locked, hence pressurization is not possible.

For item 1 above, the FAA partially agrees with the commenter. In the preamble of the NPRM, Rules Docket 97–NM–232–AD, the FAA incorrectly referenced October 1996 as a date of a door opening event. The correct date is December 9, 1994. The pilots' report (which is included in Rules Docket 97–NM–232–AD) on this event states that shortly after takeoff the warning light for the main deck cargo door illuminated. Following the open in-flight procedures for the main deck cargo door, the flight crew safely returned the airplane to the departure airport. The post-flight inspection revealed that the main deck cargo door opened approximately two feet. Also, in reference to the March event where the commenter states that the door did not open in flight, a verbal report (*i.e.,* ''FAA Freighter Conversion STC Review Report Number 2, dated October 16–18, 1996,'' which is included in Rules Docket 97–NM–232–AD) from the maintenance organization of the commenter's company states that the main deck cargo door was unlocked, and that the door was flush with the exterior of the airplane. The report on this latter event states that, following departure and at 17,000 feet, the warning light of the main deck cargo door came on followed by cabin altitude climbing. While it is not clear to the FAA whether or not the main deck cargo door opened while the airplane was in flight, the condition for possible door opening (*i.e.,* rotation of the lock bar to the unlocked position in flight) did occur, which could have led to a door opening while the airplane is in flight. Therefore, the FAA has revised the ''Background'' Section (''Main Deck Cargo Door Systems'' subsection) in the preamble of final rule, Rules Docket 97–NM–232–AD, to correct the date of the subject event.

For items 2. and 4. above, the FAA agrees with the commenter's correction to items 2. and 4. above and has revised the ''Background'' Section (''Indication Systems'' and ''Means to Prevent Pressurization to an Unsafe Level'' subsections) in the preamble of final rule, Rules Docket 97–NM–232–AD, accordingly. However, we find that the correction to item 2. does not alleviate the unsafe design features that were single point failures in the door control/outflow valve interface, which could result in the valve not sensing and responding to an unsafe door condition. With the current design, it is possible that the outflow valve or associated controllers may not perform their intended function when utilized for the purpose of preventing pressurization of the airplane in the event of an unsecured door. This condition could result in cabin pressurization forcing an unsecured door open while the airplane is in flight and possible loss of the airplane.

Further, we find that the correction to item 4. does not alleviate the safety concern regarding the design feature where ALL three conditions (*i.e.,* door closed, latched, and locked) are not directly monitored. If a sequencing error caused the door to latch and lock without being fully closed, the subject indication system, as designed, would not directly alert the door operator or the flight engineer of this condition. As a result, the airplane could be dispatched with an unsecured main deck cargo door, which could lead to the cargo door opening while the airplane is in flight and possible loss of the airplane.

For item 3. above, the FAA does not concur that the attachment of the ''flag'' to the lock bar on Model 727–100 series airplanes is sufficient to indicate the position of the lock pins, even though the lock pins are bolted to the lock bar. The FAA has determined that any failure condition of a lock pin would not be detected when observing the position of the flag through the view port.

Explanation of Change to Unsafe Condition

To more accurately reflect the identified unsafe condition of this AD, the FAA has revised the final rule where applicable to read, ''to prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight and consequent rapid decompression of the airplane, including possible loss of flight control or severe structural damage; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants.''

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Regulatory Evaluation Summary

This analysis estimates the costs of AD, Rules Docket 97–NM–234–AD, that requires installation of a fail-safe hinge; redesigned warning and power control systems of the main deck cargo door; and a 9g crash barrier on Boeing Model 727 series airplanes that have been modified in accordance with certain STCs held by Kitty Hawk Air Cargo. Since the publication of the NPRM, Kitty Hawk has been purchased by Stambaugh Aviation Services. As discussed above, the FAA has determined that:

1. The main deck cargo door hinge is not fail-safe;
2. Certain control systems of the main deck cargo door do not provide an adequate level of safety; and
3. The 9g crash barrier is not structurally adequate during a minor crash landing.

It is estimated that four U.S.-registered Boeing Model 727 series airplanes will be affected by this AD. The four airplanes are all operated by one entity, American International Airways. The following discussion addresses, in sequence, the actions in the Rules Docket 97–NM–234–AD and the estimated cost associated with each of these actions. An analysis of the estimated cost is also available in the Rules Docket 97–NM–234–AD.

1. Main Deck Cargo Door Hinge

Since unsafe conditions have been identified that are likely to exist or develop on other modified Boeing Model 727 series airplanes, paragraph (a) of this AD requires, prior to the accumulation of 4,000 flight cycles since accomplishment of the installation of the main deck cargo door, or within 250 flight cycles after the effective date of this AD, whichever occurs later, a detailed inspection of the external surface of the main deck cargo door hinge to detect cracks. Based on data provided by other STC holders, the FAA estimates that this inspection will take 2 hours. At an hourly wage rate of $60, the cost of per airplane is $120 and the estimated cost for the fleet of 4 airplanes is $480.

Paragraph (b)(1) of the AD requires, within 36 months or 4,000 cycles after the effective date of this AD, whichever occurs first, a detailed inspection of the mating surfaces of both the hinge and the door skin, and the hinge and external fuselage doubler underlying the hinge. The FAA estimates that compliance with this inspection will take 200 work hours, at a cost of $12,000 per airplane, or $48,000 for the affected fleet.

Paragraph (b)(2) of the AD requires installation of a fail-safe door hinge. The compliance time for this installation is also 36 months or 4,000 cycles after the effective date of this AD, whichever occurs first. Kitty Hawk estimated that the cost to design and certificate such a hinge will be $50,000; no parts for a fail-safe door hinge will be required; and the (labor) cost of the modification will be $15,000. Total compliance cost for this provision for the affected fleet of 4 airplanes is estimated to be $110,000, undiscounted.

Paragraph (c) of the AD requires that, if any crack or discrepancy is detected during the inspection required by paragraph (a) or (b)(1) of the AD, a repair must be made prior to further flight. The cost of this repair is not attributable to this AD.

The FAA assumes that installation of the main deck cargo door hinge (paragraph (b)(2) of this AD) will be accomplished at the same time as the detailed inspection of fastener holes (paragraph (b)(1) of this AD). It is also assumed that the affected operator will perform these two activities uniformly throughout the 36-month compliance time. Finally, it is assumed that the certification cost for the main deck cargo door hinge will be incurred within the first 6 months after the effective date of this AD. Consequently, the cost to comply with paragraphs (a) through (c) of this AD, over the 36-month compliance time, is estimated at $158,000, undiscounted, or $145,000 discounted to present value.

2. Main Deck Cargo Door Systems

Work on the door systems relates to paragraphs (d) and (e) of the AD. Paragraph (d) of the AD requires, within 60 days after the effective date of this AD, the revising of the Limitations Section of the FAA-approved AFM Supplement to provide the flight crew with procedures for ensuring that all power is removed from the main deck cargo door prior to dispatch of the airplane, and that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane. In addition, paragraph (d) of the AD requires the installation of any associated placards.

The FAA assumes that Boeing Model 727 series airplanes, converted under a Kitty Hawk STC, will have an acceptable pressurization vent door installed, which could be used by operators to visually determine whether the vent is in the proper position prior to dispatch, indicating that the door is closed, latched, and locked. The FAA estimates that this activity will take no more than 30 minutes. Assuming that each affected airplane flies one flight per day, 260 days per year, the estimated cost per inspection is $30, or $7,800 per airplane, per year, until the door system is changed. This results in an estimated total cost of $94,000 for the affected airplanes, over the 36-month compliance time.

Paragraph (e) of this AD requires, within 36 months after the effective date of the AD, incorporation of redesigned main deck cargo door systems. Kitty Hawk estimates that the development and certification of the system will cost $175,000. Modification parts are estimated to cost $38,000 per airplane, and labor costs are estimated to be $23,500 per airplane. The FAA assumes that operators will incorporate redesigned main deck cargo door systems during regularly scheduled maintenance. (Kitty Hawk indicated that any lost revenue due to additional down time should be attributed to the installation of the 9g crash barrier, discussed below.) The total cost of incorporating redesigned main deck cargo door systems, including certification, parts, and labor is estimated to be $421,000 over the 36-month compliance time.

The total estimated cost to comply with the requirements for the main deck cargo door systems is estimated to be $514,600 undiscounted, or $472,000, discounted to present value.

3. 9g Crash Barrier

Paragraph (f) of this AD requires, within 36 months or 4,000 flight cycles after the effective date of the AD,

whichever occurs first, installation of a main deck cargo barrier that complies with the applicable requirements of CAR part 4b. Ventura Aerospace holds a STC for an approved 9g crash barrier, and the FAA expects that operators whose airplanes have been modified in accordance with the KittyHawk STC will purchase 9g crash barrier kits from Ventura Aerospace. In response to the one public comment on the economic analysis of the NPRM, and based on new data, there was an increase in the cost estimate for the Ventura 9g crash barrier in this final regulatory evaluation from that provided in the NPRM. The cost of a Ventura barrier kit is $67,000, while labor costs (to install the barrier) are estimated at $33,000 per airplane (for 550 hours of work). Also, while the barrier is installed, an affected airplane is expected to be out of service for 7 additional days, at an estimated (out-of-service) cost of $15,000 per day. The commenter estimated the cost per airplane, for the Ventura 9g barrier, at $193,500. With the new data, the FAA estimates the cost per airplane, for the Ventura barrier, at $205,000.

The FAA assumes that operators will install 9g crash barriers uniformly over the 36-month compliance time. The total undiscounted cost of this requirement is estimated to be $820,000, or $716,000 discounted to present value.

4. AMOC and Special Flight Permits

Paragraph (g) of the AD allows an AMOC or adjustment of compliance time that provides an acceptable level of safety if approved by the Manager of the Atlanta ACO. The FAA is unable to determine the cost of an AMOC, but assumes that it will be less than the cost of complying with the provisions in paragraphs (a) through (f) of the AD.

Paragraph (h) of the AD allows special flight permits in accordance with the regulations to operate an affected airplane to a location where the requirements of the AD could be accomplished.

5. Total Cost of the AD

The FAA estimates the total compliance cost of this AD to be $1.5 million, undiscounted, or $1.3 million discounted to present value.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA of 1980 requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA of 1980 covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that the rule will have such an impact, the agency must prepare a regulatory flexibility analysis as described in the RFA in 1980. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, Section 605(b) of the RFA of 1980 provides that the head of the agency may so certify. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA conducted the relevant assessment of this AD, and determined that it will not have a significant impact on a substantial number of small entities. Only one operator, American International Airways, will be affected by this AD; and that operator is not a small entity (it employees more than 1,500 people). Consequently, the FAA certifies that this AD will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Analysis

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. Such a mandate is deemed to be a ''significant regulatory action.''

This AD does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

Federalism Implications

The regulations of this AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this AD will not have sufficient federalism implications to warrant the preparation of a federalism assessment.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–16–21 Boeing: Amendment 39–12860. Docket 97–NM–234–AD.

Applicability: Model 727 series airplanes that have been converted from a passenger- to a cargo-carrying (''freighter'') configuration in accordance with Supplemental Type Certificate (STC) ST00015AT; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane, including possible loss of flight control or severe structural damage; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants; accomplish the following:

Actions Addressing the Main Deck Cargo Door Hinge

(a) Prior to accumulation of 4,000 flight cycles since accomplishment of the installation of the main deck cargo door, or within 250 flight cycles after the effective date of this AD, whichever occurs later, perform a detailed inspection of the external surface of the main deck cargo door hinge (both fuselage and door side hinge elements) to detect cracks.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(b) Within 36 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first, accomplish paragraphs (b)(1) and (b)(2) of this AD.

(1) Perform a detailed inspection of the mating surfaces of both the hinge and the door skin and external fuselage doubler underlying the hinge to detect cracks or other discrepancies (e.g., double or closely drilled holes, corrosion, chips, scratches, or gouges). The detailed inspection shall be accomplished in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. The requirements of this paragraph may be accomplished prior to or concurrently with the requirements of paragraph (b)(2) of this AD.

(2) Install a main deck cargo door hinge that complies with the applicable requirements of Civil Air Regulations (CAR) part 4b, including fail-safe requirements, in accordance with a method approved by the Manager, Los Angeles ACO.

(c) If any crack or discrepancy is detected during the detailed inspection required by either paragraph (a) or (b)(1) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO.

Note 3: Accomplishment of the actions in accordance with Kitty Hawk Service Bulletin KHA 727–004, Revision B, dated March 3, 1999, constitutes compliance with the requirements of paragraphs (b) and (c) of this AD.

Actions Addressing the Main Deck Cargo Door Systems

(d) Within 60 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) Supplement by inserting therein procedures to ensure that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane, and install any associated placards. The AFM revision procedures and installation of any associated placards shall be accomplished in accordance with a method approved by the Manager, Los Angeles ACO.

Note 4: Accomplishment of the actions in accordance with Kitty Hawk Service Bulletin 727–008, dated January 7, 2000, constitutes compliance with the requirements of paragraph (d) of this AD.

(e) Within 36 months after the effective date of this AD, incorporate redesigned main deck cargo door systems (e.g., power control, view ports, and means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked), including any associated procedures and placards, that comply with the applicable requirements of CAR part 4b and criteria specified in Appendix 1 of this AD; in accordance with a method approved by the Manager, Los Angeles ACO.

Note 5: The design data submitted for approval should include a Systems Safety Analysis and Instructions for Continued Airworthiness that are acceptable to the Manager, Los Angeles ACO.

Actions Addressing the Main Deck Cargo Barrier

(f) Within 36 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first, install a main deck cargo barrier that complies with the applicable requirements of CAR part 4b, in accordance with a method approved by the Manager, Los Angeles ACO.

Note 6: The maximum main deck total payload that can be carried is limited to the lesser of the approved cargo barrier weight limit, weight permitted by the approved maximum zero fuel weight, weight permitted by the approved main deck position weights, weight permitted by the approved main deck running load or distributed load limitations, or approved cumulative zone or fuselage monocoque structural loading limitations (including lower hold cargo).

Note 7: Installation of a Ventura Aerospace Inc. cargo barrier STC ST00848LA is an approved means of compliance with the requirements of paragraph (f) of this AD.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 8: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Effective Date

(i) This amendment becomes effective on September 19, 2002.

Appendix 1

Excerpt from an FAA Memorandum to Director-Airworthiness and Technical Standards of ATA, dated March 20, 1992.

''(1) *Indication System:*

(a) The indication system must monitor the closed, latched, and locked positions, directly.

(b) The indicator should be *amber* unless it concerns an outward opening door whose opening during takeoff could present an immediate hazard to the airplane. In that case the indicator must be *red* and located in plain view in front of the pilots. An aural warning is also advisable. A display on the master caution/warning system is also acceptable as an indicator. For the purpose of complying with this paragraph, an immediate hazard is defined as significant reduction in controllability, structural damage, or impact with other structures, engines, or controls.

(c) Loss of indication or a false indication of a closed, latched, and locked condition must be improbable.

(d) A warning indication must be provided at the door operators station that monitors the door latched and locked conditions directly, unless the operator has a visual indication that the door is fully closed and locked. For example, a vent door that monitors the door locks and can be seen from the operators station would meet this requirement.

(2) *Means to Visually Inspect the Locking Mechanism:*

There must be a visual means of directly inspecting the locks. Where all locks are tied to a common lock shaft, a means of inspecting the locks at each end may be sufficient to meet this requirement provided no failure condition in the lock shaft would go undetected when viewing the end locks. Viewing latches may be used as an alternate to viewing locks on some installations where there are other compensating features.

(3) *Means to Prevent Pressurization:*

All doors must have provisions to prevent initiation of pressurization of the airplane to an unsafe level, if the door is not fully closed, latched and locked.

(4) *Lock Strength:*

Locks must be designed to withstand the maximum output power of the actuators and maximum expected manual operating forces treated as a limit load. Under these conditions, the door must remain closed, latched and locked.

(5) *Power Availability:*

All power to the door must be removed in flight and it must not be possible for the flight crew to restore power to the door while in flight.

(6) *Powered Lock Systems:*

For doors that have powered lock systems, it must be shown by safety analysis that inadvertent opening of the door after it is fully closed, latched and locked, is extremely improbable.''

Issued in Renton, Washington, on August 6, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20508 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–235–AD; Amendment 39–12861; AD 2002–16–22]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes Modified in Accordance With Supplemental Type Certificate SA1444SO, SA1509SO, SA1543SO, or SA1896SO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger-to a cargo-carrying (''freighter'') configuration, that requires, among other actions, installation of a fail-safe hinge, redesigned main deck cargo door warning and power control systems, and 9g crash barrier. This amendment is prompted by the FAA's determination that the main deck cargo door hinge is not fail-safe; that certain main deck cargo door control systems do not provide an adequate level of safety; and that the main deck cargo barrier is not structurally adequate during an emergency landing. The actions specified by this AD are intended to prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane, including possible loss of flight control or severe structural damage; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants.

DATES: Effective September 19, 2002.

ADDRESSES: Information pertaining to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Paul Sconyers, Associate Manager, Airframe and Propulsion Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703–6076; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger to a cargo-carrying (''freighter'') configuration was published in the **Federal Register** on November 12, 1999 (64 FR 61533). That action proposed to require, among other actions, installation of a fail-safe hinge, redesigned main deck cargo door warning and power control systems, and 9g crash barrier.

Background

For the convenience of the reader, certain excerpts and information, below, from the following sections of the preamble of the notice of proposed rulemaking (NPRM) are provided in this final rule: Discussion, Main Deck Cargo Door Hinge, Main Deck Cargo Door Systems, and Cargo Restraint Barrier.

Discussion

Supplemental Type Certificate (STC) SA1509SO specifies a design for a cargo door, associated cargo door cutout, and door systems. STC SA1543SO specifies a design for a Class ''E'' cargo interior with a cargo restraint barrier net. STCs SA1444SO and SA1896SO specify a design for both of these subject areas. (All of these STCs are held by Pemco.) As discussed in NPRMs, Rules Docket No. 97-NM–81-AD (the final rule, AD 98–26–21, amendment 39–10964, was published in the **Federal Register** on January 12, 1999 (64 FR 2061)), which is applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger to a cargo-carrying (''freighter'') configuration, the FAA has conducted a design review of Boeing Model 727 series airplanes modified in accordance with STCs SA1590SO and SA1543SO and has identified several potential unsafe conditions. (Results of this design review are contained in ''FAA Freighter Conversion STC Review, Report Number 1, dated September 23–26, 1996,'' (hereinafter referred to as ''the Design Review Report''), which is included in the Rules Docket, 97-NM–235-AD.) This NPRM proposes corrective action for three of those potential unsafe conditions that relate to the following three areas: main deck cargo door hinge, main deck cargo door systems, and main deck cargo barrier.

Main Deck Cargo Door Hinge

In order to avoid catastrophic structural failure, it has been a typical industry approach to design outward opening cargo doors and their attaching structure to be fail-safe (i.e., designed so that if a single structural element fails, other structural elements are able to carry resulting loads). Another potential design approach is safe-life, where the critical structure is shown by analyses and/or tests to be capable of withstanding the repeated loads of variable magnitude expected in service for a specific service life. Safe-life is usually not used on critical structure because it is difficult to account for manufacturing or in-service accidental damage. For this reason, plus the fact that none of the STC holders have provided data in support of this approach, the safe-life approach will not be discussed further regarding the design and construction of the main deck cargo door hinge.

Structural elements such as the main deck cargo door hinge are subject to severe in-service operating conditions that could result in corrosion, binding, or seizure of the hinge. These conditions, in addition to the normal operational loads, can lead to early and unpredictable fatigue cracking. If a main deck cargo door hinge is not a fail-safe design, a fatigue crack could initiate and propagate longitudinally undetected, which could lead to a complete hinge failure. A possible consequence of this undetected failure is the opening of the main deck cargo door while the airplane is in flight. Service experience indicates that the opening of a cargo door while the airplane is in flight can be extremely hazardous in a variety of ways including possible loss of flight control, severe structural damage, or rapid decompression, any of which could lead to loss of the airplane.

The design of the main deck cargo door hinge must be in compliance with Civil Air Regulations (CAR) part 4b, including CAR section 4b.270, which requires, in part, that catastrophic failure or excessive structural deformation, which could adversely affect the flight characteristics of the airplane, is not probable after fatigue failure or obvious partial failure of a single principal structural element. One common feature of a fail-safe hinge design is a division of the hinge into multiple segments such that, following

failure of any one segment, the remaining segments would support the redistributed load.

The main deck cargo door installed in accordance with STC SA1509SO, SA1444SO, or SA1896SO is supported by latches along the bottom of the door and one continuous hinge along the top. This single-piece hinge is considered a critical structural element for this STC. A crack that initiates and propagates longitudinally along the hinge line of the continuous hinge will eventually result in failure of the entire hinge, because there is no segmenting of the hinge to interrupt the crack propagation and support the redistributed loads. Failure of the entire hinge can result in the opening of the main deck cargo door while the airplane is in flight.

As discussed in the Design Review Report, an inspection of one Boeing Model 727 series airplane modified in accordance with STCs SA1509SO and SA1543SO revealed a number of fasteners with both short edge margins and short spacing in the cargo door cutout external doublers. Some edge margins were as small as one fastener diameter. Fasteners that are placed too close to the edge of a structural member or spaced too close to an adjacent fastener can result in inadequate joint strength and stress concentrations, which may result in fatigue cracking of the skin. If such defects were to exist in the structure of the door or the fuselage to which the main deck cargo door hinge is attached, the attachment of the hinge could fail, and consequently cause the door to open while the airplane is in flight.

Main Deck Cargo Door Systems

In early 1989, two transport airplane accidents were attributed to cargo doors coming open during flight. The first accident involved a Boeing 747 series airplane in which the cargo door separated from the airplane, and damaged the fuselage structure, engines, and passenger cabin. The second accident involved a McDonnell Douglas DC–9 series airplane in which the cargo door opened but did not separate from its hinge. The open door disturbed the airflow over the empennage, which resulted in loss of flight control and consequent loss of the airplane. Although cargo doors have opened occasionally without mishap during takeoff, these two accidents serve to highlight the extreme potential dangers associated with the opening of a cargo door while the airplane is in flight.

As a result of these cargo door opening accidents, the Air Transport Association (ATA) of America formed a task force, including representatives of the FAA, to review the design, manufacture, maintenance, and operation of airplanes fitted with outward opening cargo doors, and to make recommendations to prevent inadvertent cargo door openings while the airplane is in flight. A design working group was tasked with reviewing 14 CFR 25.783 (and its accompanying Advisory Circular (AC) 25.783–1, dated December 10, 1986) with the intent of clarifying its contents and recommending revisions to enhance future cargo door designs. This design group also was tasked with providing specific recommendations regarding design criteria to be applied to existing outward opening cargo doors to ensure that inadvertent openings would not occur in the current transport category fleet of airplanes.

The ATA task force made its recommendations in the ''ATA Cargo Door Task Force Final Report,'' dated May 15, 1991 (hereinafter referred to as ''the ATA Final Report''). On March 20, 1992, the FAA issued a memorandum to the Director-Airworthiness and Technical Standards of ATA (hereinafter referred to as ''the FAA Memorandum''), acknowledging ATA's recommendations and providing additional guidance for purposes of assessing the continuing airworthiness of existing designs of outward opening doors. The FAA Memorandum was not intended to upgrade the certification basis of the various airplanes, but rather to identify criteria to evaluate potential unsafe conditions demonstrated on in-service airplanes. Appendix 1 of this AD contains the specific paragraphs from the FAA Memorandum that set forth the criteria to which the outward opening doors should be shown to comply.

Applying the applicable requirements of CAR part 4b and design criteria provided by the FAA Memorandum, the FAA has reviewed the original type design of major transport airplanes, including Boeing 727 airplanes equipped with outward opening doors, for any design deficiency or service difficulty. Based on that review, the FAA identified unsafe condition and issued, among others, the following ADs:

- For certain McDonnell Douglas Model DC–9 series airplanes: AD 89–02, amendment 39–6216 (54 FR 21416, May 18, 1989);
- For all Boeing Model 747 series airplanes: AD 90–09–06, amendment 39–6581 (55 FR 15217, April 23, 1990);
- For certain McDonnell Douglas Model DC–8 series airplanes: AD 93–20–02, amendment 39–8709 (58 FR 471545, October 18, 1993);
- For certain Boeing Model 747–100 and –200 series airplanes: AD 96–01–51, amendment 39–9492 (61 FR 1703, January 23, 1996); and
- For certain Boeing Model 727–100 and –200 series airplanes: AD 96–16–08, amendment 39–9708 (61 FR 41733, August 12, 1996).

Using the criteria specified in the ATA Final Report and the FAA Memorandum as evaluation guides, the FAA conducted an engineering design review and inspection of an airplane modified in accordance with STCs SA1509SO and SA1543SO (held by Pemco). The FAA identified a number of unsafe conditions with the main deck cargo door systems of these STCs. The FAA design review team determined that the design data of these STCs design data did not include a safety analysis of the main deck cargo door systems.

As specified in the criteria contained in Appendix 1 of this AD, for powered lock systems on the main deck cargo door, it must be shown by safety analysis that inadvertent opening of the door after it is fully closed, latched, and locked is extremely improbable. However, the FAA is aware of two events in which the main deck cargo door open during flight. These events occurred on FedEx passenger/freighter conversion STCs in December 9, 1994, and March 1995. These events are referenced in the Design Review Report.

The FAA has reviewed the design drawings of the main deck cargo door systems installed on Boeing Model 727 series airplanes modified in accordance with STCs SA1444SO, SA1509SO, and SA1896SO, and has determined that the design of the door systems is nearly identical to that installed on the subject FedEx passenger/freighter conversion STCs. Therefore, the door opening events disclosed by FedEx are likely to occur on airplanes modified in accordance with STC SA1444SO, SA1509SO, or SA1896SO.

For airplanes modified in accordance with STC SA1444SO, SA1509SO, SA1543SO, or SA1896SO, the FAA considers the following four specific design deficiencies of the main deck cargo door systems to be unsafe:

1. Indication System

The main deck cargo door indication system for the STCs SA1509SO, SA1444SO, and SA1896SO uses a warning light at the door operator's control panel and a light at the flight engineer's panel. Both of these lights indicate the status of the cargo door latch and lock positions, but do not indicate either the door open or closed status. All three conditions (*i.e.*, door

closed, latched, and locked) must be monitored directly so that the door indication system cannot display either ''latched'' before the door is closed or ''locked'' before the door is latched. If a sequencing error caused the door to latch and lock without being fully closed, the subject indication system, as designed, would not alert the door operator or the flight engineer of this condition. As a result, the airplane could be dispatched with the main deck cargo door unsecured, which could lead to the cargo door opening while the airplane is in flight and possible loss of the airplane.

The light on the flight engineer's panel is labeled ''MAIN CARGO'' and is displayed in red since it indicates an event that requires immediate pilot action. However, if the flight engineer is temporarily away from his station, a door unsafe warning indication could be missed by the pilots. In addition, the flight engineer could miss such an indication by not scanning the panel. As a result, the pilots and flight engineer could be unaware of, or misinterpret, an unsafe condition and could fail to respond in the correct manner. Therefore, an indicator light must be located in front of and in plain view of both pilots since one of the pilot's stations is always occupied during flight operations.

The main deck cargo door indication system of STCs SA1509SO, SA1444SO, and SA1896SO does not have a level of reliability that is considered adequate for safe operation. Many components are exposed to the environment during cargo loading operations and may be contaminated by precipitation, dirt, and grease, or damaged by foreign objects or cargo loading equipment. As a result, wires, switches, and relays can fail, jam, or short circuit and cause a loss of indication or a false indication to the door operator and flight crew. The design logic of the indication system (*i.e.*, lights which extinguish when the door is locked) will, in the event of a single point failure that would extinguish the light, result in an erroneous ''safe'' indication regardless of actual door status.

The design of STCs SA1509SO, SA1444S0, and SA1896S0 has a ''Press-to-Test'' red warning light on the main deck cargo door control panel located near the L–1 door. The design of the monitoring system of the main deck cargo door does not include separate lights to provide the door operator with door close, latch, and lock status. The electrical wiring design of the close, latch, and lock sensors of the door monitoring system are wired in parallel instead of in series. In parallel, two sensors could be sensing ''unsafe'' and the third sensor could be sensing ''safe.'' If this situation were to occur, the sensors would not illuminate the red warning light on the door control panel or at the flight engineer's panel. Therefore, the ''Press-to-Test'' feature is adequate to check the light bulb functionality, but is not adequate to check the cargo door close, latch, and lock functions and status without annunciator lights for those three functions.

2. Means to Visually Inspect the Locking Mechanism

The single view port of the main deck cargo door installed in accordance with STCs SA1444SO, SA1509SO, and SA1896SO is included to allow the flight crew to conduct a visual inspection of the door locking mechanism. This view port is used in conjunction with the door warning system and should provide a suitable ''back-up'' in the event that the main deck cargo door warning system malfunctions.

The door locking mechanism is an assembly comprised of multiple lock pins (one for each of the door latches) connected by linkages to a common lock shaft. Although an indicator flag attached to the lock shaft can be seen through the view port when the shaft is in the ''locked'' position, a failure between the shaft and the pins could go undetected, because this flag is attached to the lock shaft and not the actual lock pins. If such a failure goes undetected, the airplane may be dispatched with the main deck cargo door warning system inoperative and the door not fully closed, latched, and locked, which could lead to a main deck cargo door opening while the airplane is in flight and possible loss of the airplane. Therefore, the FAA finds that the subject view port is not a suitable back-up when the cargo door warning system malfunctions.

As discussed in the ATA Final Report and the FAA Memorandum, there must be a means of directly inspecting each lock or, at a minimum, the locks at each end of the lock shaft of certain designs, such that a failure condition in the lock shaft would be detectable.

3. Means to Prevent Pressurization to an Unsafe Level

Boeing 727–100 and –200 airplanes modified in accordance with STC SA1444SO, SA1509SO, or SA1896SO are configured to utilize the existing pressurization outflow valve for the purpose of preventing fuselage pressurization of the airplane to an unsafe level in the event that the main deck cargo door is not closed, latched, and locked. The FAA design review of these modified Boeing 727–200 airplanes (documented in the Design Review Report) identified single point failures in the door control/outflow valve interface that could result in the valve not sensing and responding to an unsafe door condition. In addition, the FAA found no data to substantiate that the outflow valve location and size could prevent pressurization to an unsafe level. With the current design, it is possible that the outflow valve may not perform its intended function when utilized for the purpose of preventing pressurization of the airplane in the event of an unsecured door. This condition could result in cabin pressurization forcing an unsecured door open while the airplane is in flight and possible loss of the airplane.

In some cases, neither Boeing 727–100 airplanes nor Boeing 727–200 airplanes modified in accordance with the STC SA1444SO or SA1509SO have any means of preventing pressurization in the event that the main deck cargo door is not closed, latched, and locked, and therefore, have a higher risk of a cargo door opening while the airplane is in flight and possible loss of the airplane.

4. Powered Lock Systems

The main deck cargo door control system for STCs SA1444SO, SA1509SO, and SA1896SO that utilizes electrical interlock switches is designed to remove door control power (electrical and hydraulic) prior to flight and to prevent inadvertent door openings. As discussed previously, the door system design of the subject STCs is nearly identical to the FedEx design. The FedEx door opening events, discussed previously, indicate the likelihood that there may be latent and/or single point failures that can restore or continue to allow power to the door controls and cause inadvertent door openings. The failure modes may be found in the electrical portion of the door control panel, which, in turn, activates the door control hydraulics. The potential for the occurrence of these failure conditions is increased by the harsh operating environment of freighter airplanes. Door system components are routinely exposed to precipitation, dirt, grease, and foreign object intrusion, all of which increase the likelihood of damage. As a result, wires, switches, and relays have a greater potential to fail or short circuit in such a way as to allow the cargo door to be powered open without an operator's command and regardless of electrical interlock positions.

A systems safety analysis would normally evaluate and resolve the potential for these types of unsafe conditions. However, the design data for STCs SA1444SO, SA1509SO, and SA1896SO do not include a systems safety analysis to specifically identify these failure modes and do not show that an inadvertent opening is extremely improbable. The need for a system safety analysis is identified in the ATA Final Report and the FAA Memorandum.

Cargo Restraint Barrier

In order to ensure the safety of occupants during emergency landing conditions, the FAA first established in 1934, a set of inertia load factors used to design the structure for restraining items of mass in the fuselage. Because the airplane landing speeds have increased over the years as the fleet has transitioned from propeller to jet design, inertia load factors were changed as specified in CAR part 4b.260. Experience has shown that an airplane designed to this regulation has a reasonable probability of protecting its occupants from serious injury in an emergency landing. The 727 passenger airplane was designed to these criteria which specified an ultimate inertia load requirement of 9g in the forward direction. These criteria were applied to the seats and structure restraining the occupants, including the flight crew, as well as other items of mass in the fuselage.

When the 727 passenger airplane is converted to carry cargo on the main deck, a cargo barrier is required, since most cargo containers and the container-to-floor attaching devices are not designed to withstand emergency landing loads. In fact, the FAA estimates that the container-to-floor attaching devices will only support approximately 1.5g's to 3g's in the forward direction. Without a 9g cargo barrier, it is probable that the loads associated with an emergency landing would cause the cargo to be unrestrained and impact the occupants of the airplane, which could result in serious injury or death.

The structural inadequacy of the cargo barrier was evident to the FAA during its review in October 1996 of a Boeing 727 modified in accordance with STC SA1543SO. The observations revealed that the design of the net restraint barrier floor attachment and circumferential supporting structure does not provide adequate strength to withstand the 9g forward inertia load generated by the main deck cargo mass, nor does it provide a load path to effectively transfer the loads from the restraint barrier to the fuselage structure of the airplane. These observations are supported by data contained in ''ER 2785, Structural Substantiation of the 50k 9g Bulkhead Restraint System in Support of STC SA1543SO PN 53–1292–401 for the 9g Bulkhead 53–1980–300 Assembly with Upper Attachment Structure, Lower Attachment Structure, Floor Shear Web Structure, Seat Track Splice Fittings, Seat Tracks, and Seat Track Splices,'' dated September 29, 1996, by M. F. Daniel. Although this report was specific to STC SA1543SO, the FAA has determined that the data are applicable to airplanes modified in accordance with STCs SA1444SO, SA1543SO, and SA1896SO because the design principles for attachment of the barriers in both STC's are similar. The report reveals that the structural deficiencies were found in the net attach plates and floor attachment structure of the cargo barrier. The data show large negative margins of safety, which indicate that the inertia load capability of the cargo barrier is closer to 2g than the required 9g in the forward direction. From these analyses, it is evident that the cargo restraint barrier would not be capable of preventing serious injury to the occupants during an emergency landing event with the full allowable cargo load.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The FAA has received comments in response to the four NPRM actions (i.e., Rules Dockets 97–NM–232–AD, 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD) that address the same subjects described above for four different sets of cargo modification STCs. Some of these comments addressed only one NPRM, while others addressed all four. Because in most cases the issues raised by the commenters are generally relevant to all four NPRMs, each final rule includes a discussion of all comments received.

Definition of Detailed Visual Inspection

One commenter provided Boeing's definition of a detailed visual inspection. The commenter requests that the FAA approve Boeing's definition as meeting the ''detailed visual inspection'' definition specified in Note 2 of the NPRM. The commenter states that it has incorporated Boeing's definition into its General Maintenance Manual (GMM), and that it is performing the detailed visual inspection of the main deck cargo door hinge in accordance with the GMM. The commenter also states that acceptance of the existing Boeing's definition will allow for work standardization and consistency.

The FAA partially concurs. The FAA concurs that, for the purpose of this AD, the definition provided by the commenter satisfies the intent of the definition contained in Note 2 of this AD. The detailed inspection definition specified in Note 2 of this AD is a standard definition that is used in all ADs that require a detailed inspection. Therefore, the FAA finds that no change to Note 2 of the final rule is necessary. However, for clarification purposes, the FAA has revised all references to a ''detailed visual inspection'' in the NPRM to ''detailed inspection'' in the final rule.

Main Deck Cargo Door Hinge

Two commenters request that the compliance time for accomplishing the detailed visual inspection required by paragraph (a) of the NPRM be revised. One commenter states that the compliance time should include a threshold of ''prior to the accumulation of five years since accomplishment of the original conversion.'' The commenter states that operators of newly modified airplanes should not have to accomplish the detailed visual inspection required by paragraph (a) of the NPRM because it would be unlikely that brand new hinges would develop cracks within 250 flight cycles after being installed. The other commenter states that the compliance time should be revised to ''at the next scheduled 'B' check, or 350 cycles after the effective date of the NPRM, whichever occurs first.'' The commenter states that such an extension would allow the inspection to be accomplished during a regularly scheduled ''B'' check and would not be disruptive of normal maintenance inspection scheduling.

The FAA partially concurs. The FAA does not concur that the compliance time should be extended from 250 flight cycles to 350 flight cycles. In developing an appropriate compliance time for the detailed inspection required by paragraph (a) of this AD, the FAA considered the degree of urgency associated with addressing the subject unsafe condition; the results from an FAA report, ''Damage Tolerance Analysis of 727 Cargo Door Hinge,'' dated October 10, 1997; and the practical aspect of accomplishing the required inspection within an interval of time that parallels the typical ''A'' check scheduled maintenance interval for the majority of affected operators.

However, the FAA concurs with the commenter about the unlikelihood of a

newly modified airplane developing cracks within 250 flight cycles since installation. Based on the referenced FAA damage tolerance report, the FAA finds that it is unlikely that a significant crack would occur in the hinge within 4,000 flight cycles since installation. Therefore, the FAA finds that operators must accomplish the detailed inspection ''prior to accumulation of 4,000 flight cycles since accomplishment of the installation of the main deck cargo door, or within 250 flight cycles after the effective date of this AD, whichever occurs later.'' The FAA has revised paragraph (a) of the final rule accordingly.

One commenter requests that a high frequency eddy current (HFEC) inspection be required in paragraph (a) of the NPRM in lieu of the detailed visual inspection. The commenter states that an HFEC inspection should be used because there are no proposed repetitive inspections and a detailed visual inspection can only detect limited crack size.

The FAA does not concur. The FAA finds that accomplishment of the detailed inspection required by paragraph (a) of this AD, in conjunction with the detailed inspection required by paragraph (b)(1) of this AD and the modification required by paragraph (b)(2) of this AD, will ensure the integrity of the door and fuselage structure to which the hinge is attached. Therefore, no change to the final rule is necessary in this regard.

Two commenters request that the FAA revise paragraph (a) of the NPRM to specify that operators will be given ''credit'' for having previously accomplished the proposed detailed visual inspection of the main deck cargo door hinge in accordance with a method approved by the appropriate Aircraft Certification Office (ACO) prior to the effective date of the final rule. One commenter states that operators who accomplished the subject inspection before the effective date of this AD should not be penalized by being forced to reinspect after the effective date of this AD.

The FAA does not consider that a change to the final rule is necessary to give operators such credit. Operators are given credit for work previously performed by means of the phrase in the ''Compliance'' section of the AD that states, ''Required as indicated, unless accomplished previously.'' Therefore, in the case of this AD, if the required detailed inspection has been accomplished prior to the effective date of this AD in accordance with a method approved by the FAA, this AD does not require that it be repeated.

One commenter requests that the detailed visual inspection required by paragraph (b)(1) of the NPRM be accomplished at the next ''C'' check after five years have elapsed since the airplane was converted from a passenger-to a cargo-carrying (''freighter'') configuration. The commenter also states that a ''C'' check would allow operators to accomplish the inspection during a heavy maintenance visit.

The FAA does not concur. The FAA finds that accomplishment of the detailed inspection required by paragraph (b)(1) of this AD prior to or concurrently with requirements of paragraph (b)(2) of this AD (i.e., installation of a main deck cargo door hinge) will ensure the structural integrity of mating surfaces of the hinge. However, paragraph (g) of this AD does provide affected operators the opportunity to apply for an adjustment of the compliance time if data are presented to justify such an adjustment.

One commenter requests that the detailed visual inspection required by paragraph (b)(1) of the NPRM apply only to airplanes that have been in service for five or more years since installation of the cargo door, because the likelihood of damage increases with time in service. The commenter states that the compliance time specified in paragraph (b) of the NPRM should start from the date that the modification was installed on the airplane.

The FAA does not concur. The FAA finds that the potential for cracks in the hinge is primarily related to flight cycles (i.e., number of fuselage pressure cycles) and, to a lesser extent, calendar time. Therefore, the FAA has determined that the compliance time specified in paragraph (b) of this AD should be related to flight cycles, not calendar time. No change to the final rule is necessary in this regard.

One commenter requests that the NPRM, Rules Docket 97–NM–234–AD, be revised to reference Kitty Hawk Service Bulletin KHA 727–004, Revision A, as an appropriate source of service information for accomplishing the detailed visual inspection required by paragraphs (a) and (b)(1) of the NPRM and the modification required by paragraph (b)(2) of that NPRM. The commenter states that this service bulletin has been submitted to the FAA for approval and should be approved by the FAA prior to the issuance of the NPRM.

Another commenter states that it has developed and submitted to the FAA for approval a modification that segments the hinge on existing cargo converted airplanes and installs a segmented hinge on the new conversion. From this comment, the FAA infers that the commenter is requesting that the NPRM, Rules Docket 97–NM–233–AD, be revised to reference this modification as a terminating action for the requirements of paragraphs (b) and (c) of that NPRM.

The FAA concurs with the commenters' requests to reference service bulletins that constitute compliance with the requirements of paragraphs (b) and (c) of ADs, Rules Dockets 97–NM–233–AD and 97–NM–234–AD. The FAA has reviewed and approved Kitty Hawk Service Bulletin KHA 727–004, Revision B, dated March 3, 1999, as opposed to the Revision A mentioned by one of the commenters. The FAA also has reviewed and approved Aeronautical Engineers Incorporated (AEI) Service Bulletin AEI01–01, Revision B, dated October 26, 2001. These service bulletins describe the following procedures:

1. Visual inspection of all areas of the hinge for cracks or other signs of damage;
2. Inspection of the mating surfaces of the main deck cargo door hinge and the external doubler for discrepancies (*i.e.*, scratches, gouges, or corrosion);
3. Repair of any crack, damage, or discrepancy, if necessary; and
4. Installation of a main deck cargo door hinge that complies with the applicable requirements of CAR part 4b, including fail-safe requirements.

In addition, the FAA has reviewed and approved Federal Express E.O. Revision Record 7–5230–7–5000, Revision B, release date December 18, 2001, and Pemco Service Bulletin 727–53–0006, Revision 1, dated December 4, 2001. The procedures in these service bulletins are similar to those described in AEI Service Bulletin AEI01–01, Revision B, and Kitty Hawk Service Bulletin KHA 727–004, Revision B.

The FAA finds that accomplishment of the actions specified in the four service bulletins described previously constitutes compliance with the requirements of paragraphs (b) and (c) of final rules, Rules Dockets 97–NM–232–AD, 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD; as applicable. Therefore, the FAA has revised those final rules to include a new note that references the subject service bulletins as a source of service information for accomplishing the actions required by paragraphs (b) and (c) of those final rules; as applicable.

One commenter requests that a subparagraph be added to paragraph (b) of the NPRM to require that the detailed visual inspection required by paragraph (b)(1) of the NPRM be accomplished just

prior to final hinge installation during the process of converting an airplane from a passenger-to cargo-carrying (''freighter'') configuration. The commenter states that this revision would eliminate its concerns about the installation defects that could cause future problems.

The FAA does not concur. The FAA finds that any FAA-approved corrective action that satisfies the requirements of paragraph (b)(2) of this AD will also address the installation of a hinge during the process of converting a Boeing Model 727 series airplane from a passenger-to a cargo-carrying (''freighter'') configuration. Normally, good manufacturing procedures during production should preclude the necessity for the inspection. No change to the final rule is necessary in this regard.

One commenter notes that paragraph (b)(2) of the NPRM references CAR part 4b. The commenter asks, ''If the FAA, as evidenced by the awarding of an STC, certified the cargo door hinge, how can the current hinge not meet CAR requirements?'' The commenter also asks, ''Wasn't the original STC determined to be in compliance with those requirements? If so, what specifically needs to be done to eliminate the FAA safety concerns about hinges that do not appear to have a problem?'' The commenter suggests that paragraph (b)(2) of the NPRM be revised to require STC holders to design and make available an acceptable replacement hinge. The commenter states that this suggestion should be a condition for STC holders to continue to hold their STC approval.

From the commenter's questions, the FAA infers that the commenter believes a main deck cargo door hinge with an approved STC is compliant with the requirements of CAR part 4b. The FAA finds that clarification is necessary. Generally, there is a presumption by operators that demonstrations of compliance with the requirements of CAR part 4b is a prerequisite for granting an STC. However, the applicant for any design approval is responsible for compliance with all applicable FAA regulations. The FAA has the discretion to review or otherwise evaluate the applicant's compliance to the degree the FAA considers appropriate in the interest of safety. The normal certification process allows for the review and approval of data by FAA designees. Consequently, the FAA office responsible for the certification of an airplane or modification to an airplane or an aeronautical appliance may not review all details regarding compliance with the appropriate regulations. As explained in the NPRM, the FAA has conducted design reviews and airplane inspections and has identified a potential unsafe condition that relates to the main deck cargo door hinge.

In addition, the FAA does not concur with the commenter's request to revise paragraph (b)(2) of the AD to require STC holders to design and make available an acceptable replacement hinge. The FAA finds that such a requirement is unnecessary, because as previously discussed, the FAA has revised this final rule to include a new note that references the applicable STC holder's service bulletin as a source of service information for accomplishing the actions required by paragraphs (b) and (c) of this final rule.

Main Deck Cargo Door Systems

One commenter requests that the compliance time for accomplishing the Airplane Flight Manual (AFM) revisions required by paragraph (d) of the NPRM be revised from ''within 60 days after the effective date of this AD'' to ''within 60 days after submission of the procedures to the FAA.'' The commenter states that operators should be able to design revisions to the AFM within the proposed 60 days. However, the commenter believes that the Atlanta ACO will not be able to approve every one of those AFM Supplements within that time period.

The FAA does not concur. Since the release of the NPRM, some of the affected STC holders and operators have already developed AFM procedures acceptable to the FAA. The FAA finds that a 60-day compliance time is sufficient to allow the remaining operators and STC holders to develop revisions to the applicable AFMs and their supplements and for the Atlanta ACO to review and approve those AFM revisions.

One commenter submitted procedures for accomplishing the requirements of paragraph (d) of NPRM, Rules Docket 97–NM–232–AD. The commenter requests that the FAA approve those procedures prior to issuance of the final rule and include those procedures in the final rule. The commenter states that it has completed a Safety Assessment Report for each of the door configurations currently operating in its fleet. The commenter believes the results of the report demonstrate that it is ''extremely improbable'' that the door will inadvertently open in flight for any reason. Although the analysis does not demonstrate compliance with the ''extremely improbable'' standard, the commenter states that for a limited time of 36 months the door system, as installed, provides a sufficient level of safety to be considered acceptable with no modification or change in operational procedures.

The FAA partially concurs. In order to gain a better understanding of the referenced Safety Assessment Report, the FAA had a telecon with the commenter on February 19, 2000, to discuss a series of questions, which were provided to the commenter prior to the telecon, about the report. (The minutes of this telecon are included in Rules Docket 97–NM–232–AD.) In addition to the information that it provided at the telecon, the commenter also provided an analysis of the Safety Assessment Report in a letter, dated February 16, 2000, and a revised table of the Safety Assessment Report in a letter, dated March 6, 2000. The analysis in these letters provided, for a variety of failure modes, the probability of the main deck cargo door not being in the closed, latched, and locked condition prior to dispatch. The analysis showed that the warning systems of the main deck cargo door and the means to prevent pressurization if the door is not closed, latched, and locked, only meet some of the requirements of CAR § 4b.606 and criteria specified in FAA memorandum, dated March 20, 1992 (referenced in the preamble of the NPRM). The commenter also provided Revision 16 of its Boeing B–727 Flight Manual, which further clarifies a change in the procedures for verifying that the main deck cargo door is closed, latched, and locked.

In light of the clarification provided by the commenter, the FAA concurs that the procedures submitted by the commenter provide an adequate level of safety until the requirements of paragraph (e) of this AD have been accomplished, considering the level of probability of occurrence of certain failures of the warning systems of the main deck cargo door and strict adherence to the door checking procedures and associated training requirements. Since issuance of the NPRM, the FAA has reviewed and approved Federal Express Service Bulletin FX727–2001–5230–01, dated July 30, 2001, which describes procedures for ensuring that the main deck cargo door is closed, latched, and locked prior to dispatch. Accomplishment of these actions constitutes compliance with the requirements of paragraph (d) of final rule, Rules Docket 97–NM–232–AD. Therefore, the FAA has revised the final rule, Rules Docket 97–NM–232–AD, to include a new note that references the subject service bulletin as a source of service information for accomplishing

the actions required by paragraph (d) of that final rule.

One commenter provided procedures for accomplishing the requirements of paragraph (d) of NPRM, Rules Docket 97–NM–233–AD, on airplanes modified in accordance with STC SA1368SO, on which a vent door has not been installed, and on airplanes modified in accordance with STC SA1797SO, on which a vent door has been installed. The commenter states that its procedures will ensure that the main deck cargo door is properly closed, latched, and locked prior to flight.

From this comment, the FAA infers that the commenter is requesting that the FAA approve its procedures as an acceptable means of compliance to the requirements of paragraph (d) of the final rule, Rules Docket 97–NM–233–AD. The FAA does not concur. The FAA finds that any proposed operating procedure must have sufficient validation and verification that the procedures are realistic and designed to minimize possible human error. The procedure also must provide for adequate checks and balances in the event the procedure is not strictly followed. In addition, the commenter did not provide any validation of the operating procedure or results of a safety analysis. However, the FAA may approve requests for an alternative method of compliance (AMOC) under the provisions of paragraph (g) of AD, Rules Docket 97–NM–233–AD, if sufficient data are submitted to substantiate that such a operating procedure would provide an acceptable level of safety.

One commenter provided procedures for accomplishing the requirements of paragraph (d) of NPRM, Rules Docket 99–NM–234–AD. In support of its procedures, the commenter states, among other items, that an internal direct visual inspection of the latching and locking system is not possible on Model 727 series airplanes affected by that NPRM because the latching and locking systems are covered by a protective guard/cover that prevents direct viewing of these systems. Removing these covers would expose the latching and locking systems to possible foreign object damage (FOD) or damage from shifting freight. The commenter states that this condition is far more dangerous than a failure of the latching and locking systems. The commenter also states that most of the affected airplanes are equipped with flip up sill protectors, which further block the visibility of the bottom of the cargo door area (latch and lock area). The commenter concludes that a visual inspection of the latching and locking mechanisms is not appropriate for the airplane type and would create severe operational disruption with no benefit.

The FAA concurs with the commenter's conclusion that a visual inspection of the latching and locking mechanisms is not appropriate for accomplishing the requirements of paragraph (d) of final rule, Rules Docket 97–NM–234–AD. The FAA notes that paragraph (d) of that final rule does not specifically require a visual inspection of the locking mechanisms of the main deck cargo door after the door is closed, as suggested by the commenter. Since issuance of the NPRM, the FAA has reviewed and approved Kitty Hawk Service Bulletin KHA 727–008, dated January 7, 2000, which describes procedures for ensuring that the main deck cargo door is closed, latched, and locked prior to dispatch. These procedures are identical to those procedures provided by the commenter. Accomplishment of these actions constitutes compliance with the requirements of paragraph (d) of final rule, Rules Docket 97–NM–234–AD. Therefore, the FAA has revised final rule, Rules Docket 97–NM–234–AD, to include a new note to reference the subject service bulletin as a source of service information for accomplishing the actions required by paragraph (d) of that final rule.

One commenter states that the requirements for ''a means to prevent pressurization to an unsafe level'' and ''direct visual examination of all locks'' are not included in the certification basis of Model 727 series airplanes and should not be required for the interim action.

From this comment, the FAA infers that the commenter is referring to the interim actions required by paragraph (d) of the NPRM and to extracts from Appendix 1 of this AD, which sets forth the industry-accepted criteria to which the outward opening doors must be shown to comply per paragraph (e) of the NPRM. The FAA does not concur. The commenter has misinterpreted the requirements of paragraph (d) of this AD. Paragraph (d) of this AD requires procedures to ensure that all power is removed from the main deck cargo door prior to dispatch and to ensure that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane. This paragraph does not specify or limit what means or actions would be acceptable to the FAA. Operators could submit a means to prevent pressurization to an unsafe level and direct visual inspection of the locks as possible ways to ensure that the main deck cargo door is secure, in accordance with paragraph (d) of this AD. In addition, to comply with paragraph (e) of this AD, the criteria specified in Appendix 1 of this AD must be applied, irrespective of the certification basis of the airplane. Therefore, no change to the final rule is necessary in this regard.

One commenter requests that the proposed compliance time specified in paragraph (e) of the NPRM be revised from ''within 36 months after the effective date of this AD'' to ''at the next C check after the modifications are approved by the Manager, Atlanta ACO.'' The commenter states that such a compliance time would make everybody (i.e., designer, operator, and FAA) share responsibility for time delays encountered during the modification design and approval process.

The FAA does not concur. Since issuance of the NPRM, the FAA has reviewed and approved two modifications (i.e., National Aircraft Service, Inc. (NASI), STC ST01438CH and Pemco STC ST01270CH) as acceptable means for compliance with the requirements of paragraph (e) of final rules, Rules Dockets 97–NM–232–AD and 97–NM–235–AD; as applicable. Therefore, the FAA has revised the final rules, Rules Dockets 97–NM–232–AD and 97–NM–235–AD, to include a new note to reference the applicable STC as a source of service information for accomplishing the requirements of paragraph (e) of those final rules. The FAA finds that a 36-month compliance time for accomplishing the action specified in paragraph (e) of those final rules is not only sufficient for the design of the corrective actions, but also provides adequate time for operators to schedule the installation within an interval of time that parallels a heavy maintenance visit. However, under the provisions of paragraph (g) of final rules, Rules Dockets 97–NM–232–AD and 97–NM–235–AD, the FAA may approve requests for an adjustment of compliance times if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Main Deck Cargo Barrier

One commenter requests that, before issuance of the final rule, industry and the FAA form a review team to find a way of lowering the costs associated with accomplishing the proposed installation of a 9g crash barrier. The commenter suggests that lower costs could be achieved by fixing the existing barrier (e.g., the loads could be spread by the addition of structural reinforcement attachment angles) or designing a new barrier. The commenter states that the Ventura Aerospace, Inc.,

cargo barrier STC ST00848LA, which is an approved means of compliance with the requirements of paragraph (f) of NPRMs, Rules Dockets 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD, is an adequate barrier; however, the parts and installation cost estimates for the installation in those NPRMs are too low. The commenter gave examples of various actions and associated work hours that would be necessary to accomplish the proposed installation of the Ventura 9g crash barrier.

The FAA does not concur with the commenter that a review team is necessary, and that the cost estimates of NPRMs, Rules Dockets 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD, for accomplishing the installation of a main deck cargo barrier are too low. The FAA acknowledges that installation of a Ventura Aerospace, Inc., cargo barrier STC ST00848LA is an approved means of compliance with the requirements of paragraph (f) of final rules, Rules Dockets 97–NM–233–AD, 97–NM–234–AD, and 97–NM–235–AD. However, the cost estimates in the subject NPRMs were not specifically for installation of the subject Ventura 9g crash barrier, but were for installation of a 9g crash barrier that complies with the applicable requirements of CAR part 4b. The installation cost estimate of the NPRMs was provided to the FAA by Pemco based on the best data available to date.

The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur ''incidental'' costs in addition to the ''direct'' costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up; planning time; or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. Furthermore, because the FAA generally attempts to impose compliance times that coincide with operators' scheduled maintenance, the FAA considers it inappropriate to attribute the costs associated with aircraft ''downtime'' to the cost of the AD, because, normally, compliance with the AD will not necessitate any additional downtime beyond that of a regularly scheduled maintenance visit.

Public Meeting

Several commenters request that the FAA hold a public meeting prior to the issuance of the final rule in the event that the FAA does not find their procedures acceptable for compliance with the requirements of paragraph (d) of the NPRM. The commenters state that such a meeting would provide a forum for productive face-to-face discussions similar to the process used by industry's B–727 Working Group.

The FAA does not concur. As discussed previously, the FAA has accepted some of the procedures submitted by the commenters. Also, in consideration of the differing configurations of the main deck cargo door systems between the various affected STCs, a public meeting to discuss the AD may be significantly restricted in some cases because of the proprietary design and data issues. However, the FAA is available to discuss any particular proposal for procedures specific to the airplane configuration with each of the affected STC holders or operators. Further, the FAA may approve requests for an AMOC under the provisions of paragraph (g) of this AD if sufficient data are submitted to substantiate that such a procedure would provide an acceptable level of safety. Therefore, the FAA finds that no public meeting is necessary.

Issue Separate ADs

One commenter requests that the NPRM be split into separate ADs for each issue—main deck cargo door hinge, main deck cargo door systems, and 9g crash barrier. The commenter states that multiple actions addressed by a single AD make managing the actions very unwieldy and complicated.

The FAA does not concur. The FAA is not convinced that separate ADs for each issue would resolve the complexity of this AD. The FAA has determined that a less burdensome approach is to issue only one AD for each STC holder that addresses the potential unsafe conditions that relate to the main deck cargo door hinge, main deck cargo door systems, and main deck cargo barrier. In addition, operators have already initiated actions to accomplish the requirements of this AD without apparent complications.

ACO Approval

One commenter requests that the actions required by the NPRM that must be accomplished in accordance with a method approved by the Manager, Atlanta ACO, be approved by the Manager, Transport Airplane Directorate. The commenter states that the affected Boeing Model 727 series airplanes are not small airplanes, and that the approving authority should be someone in an ACO from the Transport Airplane Directorate who understands structural repairs of transport category airplanes.

The FAA does not concur. Since the subject STCs were issued by the Atlanta ACO, that office has certificate responsibility for the airplanes affected by this AD. The Atlanta ACO is most cognizant of the design details of the subject STCs and, therefore, is more able to address each operator's specific issues for complying with paragraph (d) of this AD. The Manager of the Atlanta ACO will coordinate the review of the submittals with the Transport Airplane Directorate, which has established a team consisting of members from several ACOs to review all requests in accordance with paragraphs (b)(1), (b)(2), (c), (d), (e), and (f) of this AD.

Principal Maintenance Inspector (PMI) or Principal Operations Inspector (POI) Approval

One commenter requests that the FAA allow the individual operator's local PMI or POI to approve the AFM procedures for ensuring that the main deck cargo door is closed, latched, and locked required by the NPRM, or provide an option in the NPRM that allows the procedures to be added to the airplane operator manual (AOM), if applicable. The commenter states that such approval would ensure that the approval process is accomplished quickly.

The FAA does not concur. Paragraph (d) of this AD requires comprehensive engineering evaluation in consideration of the applicable requirements of CAR part 4b and the criteria specified in Appendix 1 of this AD. Consequently, the evaluation must be conducted by the Manager, Atlanta ACO, to determine an acceptable level of safety. The PMI or POI for the air carrier is normally not familiar with all the design considerations provided by the requirements of CAR part 4b and Appendix 1 of this AD.

Cost

One commenter requests that an industry/FAA team determine a less costly method to fix the existing barriers to satisfy the FAA's concerns. For example, the loads could be spread by the addition of structural reinforcement attachment angles. The commenter states that replacing the barrier is an extreme measure, and that there must be some kind of structural additions that could be made to the existing barrier to make it acceptable at a much lower cost.

The FAA partially concurs. The STC holders and operators are certainly free to form an industry team to find common solutions. However, the FAA's reason for participation would not be for the purpose of developing a less costly design, but rather to ensure that the

final design is compliant with the applicable regulations.

One commenter requests that the FAA require STC holders to design the correction for the NPRM as a warranty issue. The commenter states that small operators, who do not have in-house engineering capability, will be at a great disadvantage when attempting to design remedies for this NPRM. The commenter also states that this NPRM places a substantial financial and operational burden on ''small entities'' just from the standpoint of not having a remedy already designed and approved.

The FAA does not concur. Any warranty agreements between the operator and an STC holder are not the responsibility of the FAA. The burden on small entities is addressed in the Regulatory Evaluation Summary and Regulatory Flexibility Analysis Section of this AD.

Descriptive Language of Preamble

One commenter states that it found the following four factual inaccuracies in the NPRM, Rules Docket 97–NM–232–AD, and requests that the FAA correct them.

1. The commenter notes that paragraph six under the heading ''Main Deck Cargo Door System'' reads, ''. . . However, the FAA is aware of two events in which the main deck cargo door opened during flight. These events occurred on FedEx passenger/freighter conversion STCs in October 1996, and March 1995.'' The commenter states that it does not have any information or records indicating that the main deck cargo door opened in flight in October 1996 or March 1995. In the March 1995 incident, the commenter contends that the door, upon landing, was found to be closed and locked, and that the lock bar was found to be in the unlocked position. The commenter states that it found a control valve electrical connection of the main deck cargo door to be disconnected, and that the door operated normally once it was reconnected.

2. The commenter disagrees with the sentence under the heading ''1. Indication System'' in the preamble of the NPRM that reads, ''Both of these lights indicate the status of the cargo door latch and lock positions, but do not indicate either the door open or closed status.'' The commenter states that its system does monitor and indicate the door closed status. If the door closed switch is not depressed, the light will stay illuminated, even if the door lock latches have rolled and the lock bar has moved into place.

3. The commenter notes that paragraph two under the heading ''2. Means to Visually Inspect the Locking Mechanism'' reads, ''* * * Although an indicator flag attached to the lock shaft can be seen through the view port when the shaft is in the 'locked' position, a failure between the shaft and the pins could go undetected, because this flag is attached to the lock shaft and not the actual lock pins.''

The commenter states that the flag is attached to the lock bar on Model 727–100 series airplanes. The lock plates are also bolted directly to the lock bar (no linkages). Therefore, the commenter contends that both the flag and lock plates become integrated parts of the lock bar.

In addition, the commenter states that the flag is attached to a lock pin on Model 727–200 series airplanes, and that the lock pin linkage does not have springs or an actuator attached to it. The commenter also contends that movement would have to be transmitted through the lock bar. The commenter further states that the stress analysis for Model 727–200 series airplanes shows high margins of safety in yield, bending, and shear for the locking hinges and fasteners.

4. The commenter notes that paragraph three under the heading ''3. Means to Prevent Pressurization to an Unsafe Level'' in the preamble of the NPRM reads, ''Boeing 727–100 airplanes modified in accordance with the subject STCs have no means of preventing pressurization in the event that the main deck cargo door is not closed, latched, and locked, and therefore, have a higher risk of a cargo door opening while the airplane is in flight and possible loss of the airplane.'' The commenter states that the system used on Model 727–100 series airplanes has a relay that drives the ground venturi system, which in turns opens the outflow valve when the main deck cargo door is not closed and locked, hence pressurization is not possible.

For item 1 above, the FAA partially agrees with the commenter. In the preamble of the NPRM, the FAA incorrectly referenced October 1996 as a date of a door opening event. The correct date is December 9, 1994. The pilots' report (which is included in Rules Docket 97–NM–232–AD) on this event states that shortly after takeoff the warning light for the main deck cargo door illuminated. Following the open in-flight procedures for the main deck cargo door, the flight crew safely returned the airplane to the departure airport. The post-flight inspection revealed that the main deck cargo door opened approximately two feet. Also, in reference to the March event where the commenter states that the door did not open in flight, a verbal report (i.e., ''FAA Freighter Conversion STC Review Report Number 2, dated October 16–18, 1996,'' which is included in Rules Docket 97–NM–232–AD) from the organization of the commenter's company states that the main deck cargo door was unlocked, and that the door was flush with the exterior of the airplane. The report on this latter event states that, following departure and at 17,000 feet, the warning light of the main deck cargo door came on followed by cabin altitude climbing. While it is not clear to the FAA whether or not the main deck cargo door opened while the airplane was in flight, the condition for possible door opening (i.e., rotation of the lock bar to the unlocked position in flight) did occur, which could have led to a door opening while the airplane is in flight. Therefore, the FAA has revised the ''Background'' (''Main Deck Cargo Door Systems'' subsection) Section in the preamble of final rule, Rules Docket 97–NM–232–AD, to correct the date of the subject event.

For items 2. and 4. above, the FAA agrees with the commenter's correction to items 2. and 4. above and has revised the ''Background'' Section (''Indication System'' and ''Means to Prevent Pressurization to an Unsafe Level'' subsections) in the preamble of final rule, Rules Docket 97–NM–232–AD, accordingly. However, we find that the correction to item 2. does not alleviate the unsafe design features that were single point failures in the door control/outflow valve interface, which could result in the valve not sensing and responding to an unsafe door condition. With the current design, it is possible that the outflow valve or associated controllers may not perform their intended function when utilized for the purpose of preventing pressurization of the airplane in the event of an unsecured door. This condition could result in cabin pressurization forcing an unsecured door open while the airplane is in flight and possible loss of the airplane.

Further, we find that the correction to item 4. does not alleviate the safety concern regarding the design feature where ALL three conditions (i.e., door closed, latched, and locked) are not directly monitored. If a sequencing error caused the door to latch and lock without being fully closed, the subject indication system, as designed, would not directly alert the door operator or the flight engineer of this condition. As a result, the airplane could be dispatched with an unsecured main deck cargo door, which could lead to

the cargo door opening while the airplane is in flight and possible loss of the airplane.

For item 3. above, the FAA does not concur that the attachment of the ''flag'' to the lock bar on Model 727–100 series airplanes is sufficient to indicate the position of the lock pins, even though the lock pins are bolted to the lock bar. The FAA has determined that any failure condition of a lock pin would not be detected when observing the position of the flag through the view port.

Explanation of Change to Unsafe Condition

To more accurately reflect the identified unsafe condition of this AD, the FAA has revised the final rule where applicable to read, ''to prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight and consequent rapid decompression of the airplane, including possible loss of flight control or severe structural damage; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants.''

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Regulatory Evaluation Summary

This evaluation estimates the costs of an AD, Rules Docket 97–NM–235–AD, which requires installation of a fail-safe hinge; redesigned warning and power control systems of the main deck cargo door; and a 9g crash barrier on Boeing Model 727 series airplanes that have been modified in accordance with certain STC's held by Pemco. As discussed above, the FAA has determined that:

1. The main deck cargo door hinge is not fail-safe;

2. Certain control systems of the main deck cargo door do not provide an adequate level of safety; and

3. The 9g crash barrier is not structurally adequate during a minor crash landing.

It is estimated that 54 U.S.-registered Boeing Model 727 series airplanes will be affected by this AD. The following discussion addresses, in sequence, the actions in this AD and the estimated cost associated with each of these actions. An analysis of the costs is also available in Rules Docket 97–NM–235–AD.

1. Main Deck Cargo Door Hinge

Since unsafe conditions have been identified that are likely to exist or develop on other modified Boeing Model 727 series airplanes, paragraph (a) of this AD requires, within 250 flight cycles after the effective date of this AD, a detailed inspection of the external surface of the main deck cargo door hinge (both fuselage and door side hinge elements) to detect cracks. Pemco estimates that this inspection will take 1.5 work hours per airplane. At a mechanic's burdened labor rate of $60 per work hour, the estimated cost per airplane is $90, or $4,860 for the fleet of 54 affected Boeing Model 727 series airplanes.

Paragraph (b)(1) of this AD requires, within 36 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first, a detailed inspection of the mating surfaces of both the hinge and the door skin and external fuselage doubler underlying the hinge to detect cracks or other discrepancies (e.g., double or closely drilled holes, corrosion, chips, scratches, or gouges). The FAA estimates that compliance with this inspection will take 200 work hours, and that the average labor rate is $60 per hour. Consequently, the estimated cost per airplane is $12,000, or $648,000 for the affected fleet of airplanes.

Paragraph (b)(2) of this AD requires the installation of a fail-safe door hinge. The compliance time for this installation is also 36 months or 4,000 cycles, after the effective date of the AD, whichever occurs first. Pemco estimates that the cost to design and certificate such a hinge is $20,000; that the parts for a fail-safe door hinge will cost $8,000; and that the installation will take 300 hours of labor. Total compliance cost for this provision for the affected fleet of 54 airplanes is estimated to be $1.4 million.

Paragraph (c) of the AD requires that that, if any crack or discrepancy is detected during the inspection required by paragraph (a) or (b)(1) of the AD, a repair must be made prior to further flight. The cost of these repairs is not attributable to this AD.

For purposes of analysis, the FAA assumes an effective date of some time in the fourth quarter of 2002. The FAA also assumes that the installation of the main deck cargo door hinge (paragraph (b)(2) of this AD) will be accomplished at the same time as the detailed inspection of fastener holes (paragraph (b)(1) of this AD). It is also assumed that the operators of airplanes modified per Pemco STCs will perform these two activities uniformly throughout the 36-month compliance time. Finally, it is assumed that the certification cost for the main deck cargo door hinge will be incurred within the first 6 months after the effective date of this AD. Consequently, the cost to comply with paragraphs (a) through (c) of this AD, over the 36-month compliance time, is estimated at $2.1 million, undiscounted, or $1.8 million discounted to present value (at 7 percent).

2. Main Deck Cargo Door Systems

Work on the main deck cargo door systems relates to paragraphs (d) and (e) of the AD. Paragraph (d) of this AD requires, within 60 days after the effective date of this AD, revising the Limitations Section of the FAA-approved AFM Supplement to provide the flight crew with procedures to ensure that all power is removed from the main deck cargo door prior to dispatch of the airplane, and that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane. These procedures are expected to include an inspection (until the incorporation of the redesigned main deck cargo door systems), described in the next paragraph. In addition, paragraph (d) of the AD requires the installation of any associated placards.

The Pemco door system design, as provided by STCs SA1444SO, SA1896SO, and SA1509SO, is nearly identical to that of FedEx. Therefore, the cost associated with the inspection of the door can be estimated by using FedEx's assumptions. FedEx assumes that an external inspection of the flushness of the main deck cargo door, combined with an ''enhanced B-check,'' will be an acceptable interim means to ensure that the cargo door is secured prior to dispatch. With regard to the external inspection, FedEx estimates, before a redesigned door system is installed (*see* paragraph (f) of this AD), that it will take a mechanic 30 minutes to inspect for flushness of the main deck cargo door, prior to dispatch of an airplane. By using these estimates for compliance by airplanes with Pemco STCs, and assuming that each affected airplane flies one flight per day for 260 days per year, the estimated cost per inspection is $30, or $7,800 per airplane, per year, until the door system is changed. This results in an estimated total cost of about $1.3 million for inspections of the 54 affected airplanes over the 36-month compliance time.

The B-check occurs on these Boeing Model 727 series airplanes approximately twice a year. FedEx estimates that the incremental cost for maintenance during this ''enhanced B-check'' is $11,700 per airplane, per year, until the door system is changed. In addition, Pemco estimates that the setup costs for the daily inspection (i.e., procedure materials for the mechanics to perform the inspection and training requirements) will be $50,000. Assuming that the incorporation of the redesigned door system occurs uniformly over the 36-month compliance time, the total cost for this task to the operators of Pemco-modified Boeing Model 727 series airplanes is estimated to be $1.9 million. Consequently, the total cost to meet the requirements of paragraph (d) of this AD is estimated to be $3.2 million.

Paragraph (e) of the AD requires, within 36 months after the effective date of the AD, incorporation of redesigned main deck cargo door systems. Pemco estimates that the development and certification of the systems will cost $138,800. Modification parts are estimated to cost $10,000 per airplane, and labor costs are estimated to be $18,000 per airplane. The FAA expects that operators will incorporate the redesigned main deck cargo door systems during regularly scheduled maintenance, and that this work will require three additional days, on average. The affected airplanes will be out of service during this time, at an estimated cost of $18,300. Consequently, the total costs of installing a redesigned main deck cargo door system, including certification, parts, labor, and down time are estimated at $2.6 million for the affected airplane fleet over the 36-month compliance time.

The total estimated cost to comply with the requirements for the main deck cargo door systems is $5.8 million, undiscounted, or $5.1 million, discounted to present value.

3. 9g Crash Barrier

Paragraph (f) of the AD requires, within 36 months or 4,000 flight cycles after the effective date of the AD, whichever occurs first, installation of a main deck cargo barrier that complies with the applicable requirements of CAR part 4b. Pemco estimates that the development and certification of a 9g crash barrier will cost $126,500; while parts per airplane will cost $25,000, and labor services will cost $18,000 per airplane (for 300 hours of work at a burdened rate of $60 per hour).

The FAA assumes that operators will install a 9g crash barrier uniformly over the 36-month compliance time. The total cost for the 54 airplanes to comply with paragraph (f) of the AD is estimated to be $2.4 million, undiscounted, or $2.0 million discounted to present value.

4. AMOC and Special Flight Permits

Paragraph (g) of the AD allows an AMOC or adjustment of compliance time that provides an acceptable level of safety if approved by the Manager of the Atlanta ACO. The FAA is unable to determine the cost of an AMOC, but assumes that it will be less than the cost of complying with the provisions in paragraphs (a) through (f) of the AD.

Paragraph (h) of the AD allows special flight permits in accordance with the regulations to operate an affected airplane to a location where the requirements of the AD could be accomplished.

5. Total Cost of the AD

The FAA estimates that the total compliance cost of this AD will be $10.4 million, undiscounted, or $9.0 million discounted to present value.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA of 1980 requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA of 1980 covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform an assessment of all rules to determine whether the rule will have a significant economic impact on a substantial number of small entities. If the determination is that the rule will have such an impact, the agency must prepare a regulatory flexibility analysis as described in the RFA of 1980. However, if after an assessment of a proposed or final rule, an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA of 1980 provides that the head of the agency may so certify. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Issues To Be Addressed in a Final Regulatory Flexibility Analysis (FRFA)

The central focus of the FRFA, like the initial Regulatory Flexibility Analysis, is the requirement that agencies evaluate the impact of a rule on small entities and analyze regulatory alternatives that minimize the impact when there will be a significant economics impact on a substantial number of small entities.

The requirements, outlined in section 604(a)(1–5) are listed and discussed below:

1. A succinct statement of the need for, and objectives of, the rule:

The FAA has determined that the main deck cargo door hinge is not fail-safe; certain main deck cargo door control systems do not provide an adequate level of safety; and the main deck cargo barrier is not structurally adequate during a minor crash landing. The actions specified in the AD are intended to prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane, including possible loss of flight control or severe structural damage; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants.

Under the United States Code (U.S.C.), the FAA Administrator is required to consider the following matter, among others, as being in the public interest: assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce (see 49 U.S.C. 44101(d)). Forty-nine U.S.C. 44701(a) provides broad rulemaking authority to ''promote safe flight of civil aircraft in air commerce.'' Accordingly, this AD will amend Title 14 of the CFRs to require operators of Boeing Model 727 series airplanes that have been converted from a passenger to a cargo-carrying configuration to correct the identified unsafe condition.

2. A summary of the significant issues raised by the public comments in response to the initial Regulatory Flexibility Analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments:

There was one public comment that related to small entities/operators. That comment indicated that the designing of remedies to address the items required by the AD would create a burden for those small operators who do not have

in-house engineering capability to design such remedies.

In response, the FAA states that the STC holders, including Pemco, have developed solutions for the items required by the AD, which will be available to small operators.

3. A description of, and an estimate of the number of, small entities to which the rule will apply or an explanation of why no such estimate is available:

The entities affected by the rule are those operating U.S.-registered converted Boeing Model 727 series airplanes. The FAA estimates that 11 carriers operate airplanes that will be affected by this AD. One of these operators is a foreign entity. Of the 10 U.S. operators, five entities are small (they employ 1,500 people or less). The estimated discounted total cost of this AD, for the 54 affected airplanes, is $15.7 million. This translates into an average annualized cost per affected airplane of about $63,000 (over the 3-year period).

By using the average annualized cost per airplane, the annualized cost of the AD was calculated for the affected fleet of each small operator. This cost was then divided by the annual revenue of the operator (mostly for 1998).

The resulting ratios showed that for two (of the five) small operators, this ratio exceeded 1 percent. In one case, the ratio was approximately 4 percent. For a third small operator, the ratio was slightly less than 1 percent. Based on these calculations, the FAA has determined that the rule will have a significant impact on a substantial number of small entities.

4. A description of the projected reporting, record-keeping, and other compliance requirements of the rule, including an estimate of the classes of small entities, which will be subject to the requirement, and the type of professional skills necessary for preparation of the report or record.

With two minor exceptions, the rule will not mandate additional reporting or record-keeping. The rule will not overlap, duplicate, or conflict with existing Federal rules.

The AD will require operators to report results of the detailed inspection of the main deck cargo door hinge and the detailed inspection of the fastener holes common to the main deck cargo door hinge and underlying door and fuselage structure. The cost of these reports is negligible.

5. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected:

The FAA acknowledges that the rule will impose a financial requirement on small entities. Therefore, the agency considered alternatives to the rule. These alternatives are:

- Exclude small entities; and
- Extend the compliance date for small entities.

The FAA has determined that the option to exclude small entities from the requirements of the rule is not justified. The unsafe condition that exists on an affected Boeing Model 727 series airplane operated by a small entity is as potentially catastrophic as that on an affected Model 727 series airplane operated by a large entity.

The FAA also considered options to extend the compliance period for small operators. The Boeing 727 Freighter Industry Working Group, which includes all affected U.S. operators (including small entities), provided input on the incorporation of corrective actions for the door hinge, door systems, and 9g crash barrier issues. The FAA initially proposed a compliance time of 28 months, consistent with a related AD dealing with the cargo floor structure on the same airplanes. The working group requested an extension to 36 months. Following review of the working group's request, the FAA finds 36 months to be an acceptable compliance time. Therefore, the FAA has, in fact, considered and accepted this alternative and has accommodated small entity concerns about compliance time.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. Such a mandate is deemed to be a ''significant regulatory action.''

This AD does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

Federalism Implications

The regulations of this AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this AD will not have sufficient federalism implications to warrant the preparation of a federalism assessment.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–16–22 Boeing: Amendment 39–12861. Docket 97–NM–235–AD.

Applicability: Model 727 series airplanes that have been converted from a passenger- to a cargo-carrying (''freighter'') configuration in accordance with Supplemental Type Certificate (STC) SA1444SO, SA1509SO, SA1543SO, or SA1896SO; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane, including

possible loss of flight control or severe structural damage; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants; accomplish the following:

Actions Addressing the Main Deck Cargo Door Hinge

(a) Prior to the accumulation of 4,000 flight cycles since accomplishment of the installation of the main deck cargo door, or within 250 flight cycles after the effective date of this AD, whichever occurs later, perform a detailed inspection of the external surface of the main deck cargo door hinge (both fuselage and door side hinge elements) to detect cracks.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(b) Within 36 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first, accomplish paragraphs (b)(1) and (b)(2) of this AD.

(1) Perform a detailed inspection of the mating surfaces of both the hinge and the door skin and external fuselage doubler underlying the hinge to detect cracks or other discrepancies (*e.g.,* double or closely drilled holes, corrosion, chips, scratches, or gouges). The detailed visual inspection shall be accomplished in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. The requirements of this paragraph may be accomplished prior to or concurrently with the requirements of paragraph (b)(2) of this AD.

(2) Install a main deck cargo door hinge that complies with the applicable requirements of Civil Air Regulations (CAR) part 4b, including fail-safe requirements, in accordance with a method approved by the Manager, Atlanta ACO.

(c) If any crack or discrepancy is detected during the detailed inspection required by either paragraph (a) or (b)(1) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta ACO.

Note 3: Accomplishment of the actions in accordance with Pemco Service Bulletin 727–53–0006, Revision 1, dated December 4, 2001, constitutes compliance with the requirements of paragraphs (b) and (c) of this AD.

Actions Addressing the Main Deck Cargo Door Systems

(d) Within 60 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) Supplement by inserting therein the procedures specified in paragraphs (d)(1) and (d)(2) of this AD, and install any associated placards. The AFM revision procedures and installation of any associated placards shall be accomplished in accordance with a method approved by the Manager, Atlanta ACO.

(1) Procedures to ensure that all power is removed from the main deck cargo door prior to dispatch of the airplane.

(2) Procedures to ensure that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane.

(e) Within 36 months after the effective date of this AD, incorporate redesigned main deck cargo door systems (*e.g.,* warning/monitoring, power control, view ports, and means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked), including any associated procedures and placards, that comply with the applicable requirements of CAR part 4b and criteria specified in Appendix 1 of this AD; in accordance with a method approved by the Manager, Atlanta ACO.

Note 4: The design data submitted for approval should include a Systems Safety Analysis and Instructions for Continued Airworthiness that are acceptable to the Manager, Atlanta ACO.

Note 5: Installation of National Aircraft Service, Inc. (NASI), Vent Door System STC ST01438CH, is an acceptable means of compliance with the requirements of paragraph (e) of this AD.

Actions Addressing the Main Deck Cargo Barrier

(f) Within 36 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first, install a main deck cargo barrier that complies with the applicable requirements of CAR part 4b, in accordance with a method approved by the Manager, Atlanta ACO.

Note 6: The maximum main deck total payload that can be carried is limited to the lesser of the approved cargo barrier weight limit, weight permitted by the approved maximum zero fuel weight, weight permitted by the approved main deck position weights, weight permitted by the approved main deck running load or distributed load limitations, or approved cumulative zone or fuselage monocoque structural loading limitations (including lower hold cargo).

Note 7: Installation of a Ventura Aerospace Inc. cargo barrier STC ST00848LA is an approved means of compliance with the requirements of paragraph (f) of this AD.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 8: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Effective Date

(i) This amendment becomes effective on September 19, 2002.

Appendix 1

Excerpt from an FAA Memorandum to the Director-Airworthiness and Technical Standards of ATA, dated March 20, 1992

''(1) *Indication System:*

(a) The indication system must monitor the closed, latched, and locked positions, directly.

(b) The indicator should be *amber* unless it concerns an outward opening door whose opening during takeoff could present an immediate hazard to the airplane. In that case the indicator must be *red* and located in plain view in front of the pilots. An aural warning is also advisable. A display on the master caution/warning system is also acceptable as an indicator. For the purpose of complying with this paragraph, an immediate hazard is defined as significant reduction in controllability, structural damage, or impact with other structures, engines, or controls.

(c) Loss of indication or a false indication of a closed, latched, and locked condition must be improbable.

(d) A warning indication must be provided at the door operators station that monitors the door latched and locked conditions directly, unless the operator has a visual indication that the door is fully closed and locked. For example, a vent door that monitors the door locks and can be seen from the operators station would meet this requirement.

(2) *Means to Visually Inspect the Locking Mechanism:*

There must be a visual means of directly inspecting the locks. Where all locks are tied to a common lock shaft, a means of inspecting the locks at each end may be sufficient to meet this requirement provided no failure condition in the lock shaft would go undetected when viewing the end locks. Viewing latches may be used as an alternate to viewing locks on some installations where there are other compensating features.

(3) *Means to Prevent Pressurization:*

All doors must have provisions to prevent initiation of pressurization of the airplane to an unsafe level, if the door is not fully closed, latched and locked.

(4) *Lock Strength:*

Locks must be designed to withstand the maximum output power of the actuators and maximum expected manual operating forces treated as a limit load. Under these conditions, the door must remain closed, latched and locked.

(5) *Power Availability:*

All power to the door must be removed in flight and it must not be possible for the flight crew to restore power to the door while in flight.

(6) *Powered Lock Systems:*

For doors that have powered lock systems, it must be shown by safety analysis that inadvertent opening of the door after it is fully closed, latched and locked, is extremely improbable.''

Issued in Renton, Washington, on August 6, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–20509 Filed 8–14–02; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Thursday,
August 15, 2002

Part III

Department of Housing and Urban Development

12 CFR Parts 5 and 202
Uniform Financial Reporting Standards for HUD Housing Programs, Additional Entity Filing Requirements; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5 and 202

[Docket No. FR–4681–F–03]

RIN 2501–AC80

Uniform Financial Reporting Standards for HUD Housing Programs, Additional Entity Filing Requirements

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulation on Uniform Financial Reporting Standards by adding HUD-approved Title I and Title II nonsupervised lenders, nonsupervised mortgagees, and nonsupervised loan correspondents to the covered entities required to electronically submit annual financial information to HUD prepared in accordance with Generally Accepted Accounting Principles (GAAP). Under long-standing regulatory and contractual requirements, these entities already submit financial information to HUD on an annual basis. This final rule follows publication of a November 30, 2001, proposed rule. HUD is adopting the proposed regulatory amendments without change, except that the fiscal year effective dates are being delayed to accommodate the later than expected publication of the final rule.

EFFECTIVE DATE: September 16, 2002.

FOR FURTHER INFORMATION CONTACT: For further information about the entities covered by this rule, you may contact Lynn Herbert, Office of Lender Activities and Program Compliance, Office of Housing, U.S. Department of Housing and Urban Development, 490 L'Enfant Plaza East, SW., Suite 3214, Washington, DC 20024, telephone 202–708–3976 (this is not a toll-free number). For general information about this rule, contact Stacey Shindelar, Office of Lender Activities and Program Compliance, Office of Housing, U.S. Department of Housing and Urban Development, 490 L'Enfant Plaza East, SW., Suite 3214, Washington, DC 20024; telephone 202–708–1515 (this is not a toll-free number). Persons with hearing- or speech-impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

HUD's Uniform Financial Reporting Standards (UFRS) regulations, codified at 24 CFR part 5, subpart H, establish uniform annual financial reporting standards for the following entities: public housing agencies (PHAs) administering traditional public housing; PHAs administering section 8 project-based housing assistance payments programs and section 8 project-based certificate programs; owners of housing assisted under any section 8 project-based program (except for the Moderate Rehabilitation and project-based certificates programs, for which the reporting requirement applies to the administering PHAs); and multifamily housing programs receiving assistance or mortgage insurance from HUD. The regulations provide that the financial information required to be submitted to HUD on an annual basis under these programs generally must be submitted electronically and must be prepared in accordance with GAAP.

On November 30, 2001, HUD published a proposed rule (66 FR 60133) to add participants under another program to the programs covered under the UFRS rule. HUD also published a correction amending a portion of the rule preamble, on December 18, 2001 (66 FR 65162). The new covered participants are the Title I and Title II nonsupervised lenders, nonsupervised mortgagees, and nonsupervised loan correspondents, who are approved by HUD under 24 CFR part 202 to originate, purchase, hold, service, and/or sell loans. In addition to the revisions to 24 CFR 5.801 to add these participants, the proposed rule made conforming changes to 24 CFR 202.5, 202.7, and 202.8.

II. This Final Rule

This final rule adopts the proposed change made to 24 CFR 5.801 and the conforming changes to 24 CFR 202.5, 202.7, and 202.8. The public comment period for the proposed rule closed on January 29, 2002. By close of business on that date, HUD had not received any public comments on the proposed rule. One comment addressed to the estimate of paperwork burden was received; however, HUD believes that its estimate of paperwork was accurate and made no changes. The only change made to the proposed rule is that the fiscal year-end effective date in 24 CFR 5.801(d)(3) is changed to accommodate the actual publication date of this final rule. This final rule is effective for the covered Title I and Title II nonsupervised lenders, nonsupervised mortgagees, and loan correspondents with fiscal years ending on or after September 30, 2002. Audited financial statements submitted by lenders with fiscal years ending on or after September 30, 2002, must be submitted electronically. Audited financial statements submitted by lenders with fiscal years ending before September 30, 2002, may either be submitted in paper or electronically at the lenders' option.

Findings and Certifications

Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2507–0004. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This final rule would not impose any Federal mandates on any State, local, or tribal governments, or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Impact

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (24 U.S.C. 4321).

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule before publication and by approving it certifies that this rule is not anticipated to have a significant economic impact on a substantial number of small entities. This rule does not create a new reporting requirement. The annual reporting of certain financial information is a preexisting HUD program requirement. This rule adds HUD approved Title I and Title II nonsupervised lenders, nonsupervised mortgagees, and loan correspondents to the covered entities that must submit

financial data electronically. The rule standardizes, to the extent possible, the content of the information and the preparation of the information (in accordance with GAAP). HUD anticipates that these changes will bring consistency, simplicity, and reduced administrative burden to the reporting process. With respect to costs, the audit costs paid by Title I and Title II nonsupervised lenders, nonsupervised mortgagees, and loan correspondents are a recognized part of operating and administrative expenses. HUD anticipates no or very little monetary impact. The Federal Housing Commissioner has required GAAP-based accounting for a number of years and the majority of these lenders already adhere to its tenets.

Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This final rule does not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers applicable to 24 CFR part 202 are:

14.110 Manufactured Home Loan Insurance—Financing Purchase of Manufactured Homes as Principal Residences of Borrowers;

14.142 Structures and Building of New Nonresidential Structures; and

14.162 Mortgage Insurance—Combination and Manufactured Home Lot Loans.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 202

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD amends title 24 of the Code of Federal Regulations to read as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENT; WAIVERS

1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

2. Amend § 5.801 by adding paragraphs (a)(5), (c)(3), and (d)(3) to read as follows:

§ 5.801 Uniform financial reporting standards.

(a) * * *

(5) HUD-approved Title I and Title II nonsupervised lenders, nonsupervised mortgagees, and loan correspondents.

* * * * *

(c) * * *

(3) For those entities listed in paragraph (a)(5) of this section, the financial information to be submitted to HUD in accordance with paragraph (b) of this section must be submitted to HUD annually, no later than 90 days after the end of the fiscal year (or within an extended time if an extension is granted at the sole discretion of the Secretary). An extension request must be received no earlier than 45 days and no later than 15 days prior to the submission deadline.

(d) * * *

(3) The requirements of this section apply to the entities listed in paragraph (a)(5) of this section with fiscal years ending on or after September 30, 2002. Audited financial statements submitted by lenders with fiscal years ending before September 30, 2002, may either be submitted in paper or electronically at the lenders' option. Audited financial statements submitted by lenders with fiscal years ending on or after September 30, 2002, must be submitted electronically.

* * * * *

PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

3. The authority citation for 24 CFR part 202 continues to read as follows:

Authority: 12 U.S.C. 1703, 1709, and 1715b; 42 U.S.C. 3535(d).

4. In § 202.5, revise paragraph (n)(1) introductory text to read as follows:

§ 202.5 General approval standards.

* * * * *

(n) *Net Worth.* (1) Each supervised or nonsupervised lender or mortgagee approved under §§ 202.6 and 202.7 shall have a net worth of not less than $250,000 in assets acceptable to the Secretary. Each Title II supervised or nonsupervised mortgagee, except a multifamily mortgagee, shall have additional net worth in excess of $250,000 of not less than one percent of the mortgage volume exceeding $25,000,000 in value, but total net worth is not required to exceed $1,000,000. Mortgage volume is calculated as of the end of the fiscal year being audited and equals the sum of:

* * * * *

5. In § 202.7, revise paragraphs (b)(4)(i) introductory text and (b)(4)(i)(A) to read as follows:

§ 202.7 Nonsupervised lenders and mortgagees.

* * * * *

(b) * * *

(4) *Audit report.* (i) A lender or mortgagee must comply with the financial reporting requirements in 24 CFR part 5, subpart H. Audit reports shall be based on audits performed by a certified public accountant, or by an independent public accountant licensed by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970, and shall include:

(A) A financial statement in a form acceptable to the Secretary, including a balance sheet and a statement of operations and retained earnings, a statement of cash flows, an analysis of the mortgagee's net worth adjusted to reflect only assets acceptable to the Secretary, and an analysis of escrow funds; and

* * * * *

6. In § 202.8, revise paragraphs (b)(3) introductory text and (b)(3)(i) to read as follows:

§ 202.8 Loan correspondent lenders and mortgagees.

* * * * *

(b) * * *

(3) *Audit report.* A loan correspondent lender or mortgagee must comply with the financial reporting requirements in 24 CFR part 5, subpart H except that a loan correspondent mortgagee meeting the definition of a supervised lender or mortgagee in § 202.6(a) need not file annual audit reports. Audit reports shall be based on audits performed by a certified public accountant, or by an independent public accountant licensed by a regulatory authority of a State or

other political subdivision of the United States on or before December 31, 1970, and shall include:

(i) A financial statement in a form acceptable to the Secretary, including a balance sheet, statement of operations and retained earnings, a statement of cash flows, an analysis of the net worth adjusted to reflect only assets acceptable to the Secretary and an analysis of escrow funds; and

* * * * *

Dated: August 7, 2002.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 02–20678 Filed 8–14–02; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Thursday,
August 15, 2002

Part IV

Postal Service

39 CFR Part 111
Changes To the Domestic Mail Manual To Implement Confirm® Service; Final Rule

POSTAL SERVICE

39 CFR Part 111

[Docket No. MC 2002–1]

Changes to the Domestic Mail Manual To Implement Confirm® Service

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule sets forth the Domestic Mail Manual (DMM) standards adopted by the Postal Service to implement the classification and fees for Confirm® service as established by the decision of the Governors of the United States Postal Service on the recommended decision of the Postal Rate Commission approving stipulation and agreement for Confirm, Docket No. MC2002–1 (August 5, 2002).

In their decision, the Governors approved the Commission's recommendations, adopting an unopposed settlement agreement concluded by all but one party in Docket No. MC2002–1. The settlement substantially incorporated the classification and fees for Confirm, as proposed by the Postal Service in its request for a recommended decision, filed on April 24, 2002.

Confirm represents a new service offering subscribers access to data and information concerning the processing of their specially prepared and barcoded automation-compatible letter-size and flat-size mail. The service combines barcode technology with the electronic infrastructure of automated Postal Service processing equipment to record and transmit data pertaining to mail prepared according to Confirm specifications.

Through the use of a unique mailer-applied barcode, called PLANET Code®, along with the appropriate delivery address POSTNET barcode, Confirm enables a mailer subscribing to the service to identify where and when barcodes printed on mail are scanned in various postal operations. Confirm can be used to provide this information for outgoing automation-compatible mail and for incoming automation-compatible reply mail.

EFFECTIVE DATE: This final rule is effective at 12:01 a.m. on September 22, 2002.

FOR FURTHER INFORMATION CONTACT: Neil Berger at (703) 292–3645 or Paul Bakshi at (703) 292–3671.

SUPPLEMENTARY INFORMATION: On April 24, 2002, the United States Postal Service, in conformance with sections 3622 and 3623 of the Postal Reorganization Act (39 U.S.C. 101 *et seq.*), filed a Request for a recommended decision by the Postal Rate Commission (PRC) on the proposed classification and fees for Confirm, a new service using a uniquely identifying mailer-applied barcode called PLANET Code. Using these barcodes, along with the appropriate delivery address POSTNET barcodes, enables a participating mailer to identify where and when outgoing automation-compatible mail and incoming automation-compatible reply mail are scanned in various postal operations. Confirm combines barcode technology with the electronic infrastructure of automated Postal Service processing equipment to record and transmit data for successfully scanned pieces prepared according to Confirm specifications.

On July 26, 2002, pursuant to 39 U.S.C. 3624, the Postal Rate Commission issued to the Governors of the Postal Service its Opinion and Recommended Decision Approving Stipulation and Agreement, Docket No. MC2002–1. The Commission recommended that the Postal Service proposal for Confirm be established as a permanent special service. With relatively minor modifications to the proposed language for the Domestic Mail Classification Schedule, the Commission approved the Stipulation and Agreement.

On August 5, 2002, the Board of Governors approved the recommended decision and established an implementation date of Sunday, September 22, 2002, on which the approved classification and fees for Confirm service will take effect. This final rule contains the DMM standards adopted by the Postal Service to implement the decision of the Governors.

The Postal Service has determined to issue these standards as final rules, rather than first publishing them as proposed rules seeking comments. Several considerations support this determination.

First, Confirm was developed through the joint efforts of the Postal Service and its customers over a substantial period of time. As described below in the **SUPPLEMENTARY INFORMATION** of this final rule, over the past seven years, more than 300 mailers, representing a wide cross-section of the mailing industry, have participated at various times in testing and evaluating the features of the service. This experience has included an operational pilot test of Confirm since 1998, involving the collection of data pertaining to significant volumes of actual mail submitted by participating mailers. Throughout these activities, mailers have provided invaluable comments and recommendations for improving and expanding Confirm, and for ensuring that the service meets the business needs and the operational requirements of the mailing industry at large. Moreover, the Postal Service has continued to solicit recommendations from the mailing industry for enhancements to the infrastructure supporting this subscriber-based service. The recommendations coming from actual customer use and testing of the whole Confirm system have greatly influenced, not only the operational characteristics incorporated into the service, as proposed in the unopposed settlement agreement and as recommended by the Postal Rate Commission, but also the standards incorporated into the rules published here.

Second, the Postal Rate Commission conducted public hearings to consider the Postal Service proposal for Confirm that were open to any interested party. Several parties participated, including major associations of mailers, the largest union representing postal workers, individuals representing themselves as mailers, and the Director of the Commission's Office of the Consumer Advocate representing the general public. This participation led to the successful negotiation of an agreement substantially incorporating the proposal presented by the Postal Service. Virtually all participants signed the settlement agreement. Only one individual representing himself did not sign, but that same individual did not oppose the settlement. Throughout the Confirm proceedings, furthermore, participants provided comments, formally through submissions for the record, as well as informally through settlement discussions. These comments reinforced the determinations leading to the Postal Service proposal, as incorporated into the settlement agreement. The Commission accepted the settlement with only minor modifications to the language describing Confirm in the Domestic Mail Classification Schedule (DMCS).

Finally, there is a strong interest in expeditious implementation of the service that is shared by mailers currently receiving and using Confirm data and information, by prospective customers, and by the Postal Service. The Board of Governors of the Postal Service has determined to implement Confirm on September 22, 2002. This date represents the earliest time that the service can be made operationally available to the public. It also provides a reasonable time for the Postal Service to process applications adding new subscribers to existing users. If the

Postal Service were to delay implementation in order to solicit and receive additional comments, the effective date for Confirm could be delayed considerably, and current users and new subscribers would be denied the benefits of the valuable information that the service can provide. By implementing this new service without undue delays, the Postal Service can ensure that currently participating mailers are able to continue the service without interruption, and that new subscribers will be expeditiously integrated into the system.

Pursuant to these considerations, the Postal Service has concluded that the substantial number of comments and recommendations already received pertaining to Confirm would make further solicitation of comments unnecessary. Considering the broadly based participation in the development of Confirm over several years, and the Commission's acceptance of the unopposed settlement agreement in Docket No. MC2002–1, it is unlikely that the Postal Service would receive additional comments that would materially affect the rules. Furthermore, issuing proposed rules would present an impractical impediment to the timely implementation of the service. Delay would interfere with the public and mailer interests in being able to receive and use Confirm data as early as possible.

A. Service Description

1. Subscription Levels

The Postal Service will offer this service in a three-tiered subscription format rather than a per-transaction rate format. The three subscription levels for this format are designated as Silver, Gold, and Platinum, with the following fees, terms of service, number of identification codes, and number of scans:

- The Silver subscription level, with a $2,000 fee and a term of 3 consecutive months, entitles the subscriber to one identification code and up to 15 million scans during the term of the subscription.
- The Gold subscription level, with a $4,500 fee and a term of 12 consecutive months, entitles the subscriber to one identification code and up to 50 million scans during the term of the subscription.
- The Platinum subscription level, with a $10,000 fee and a term of 12 consecutive months, entitles the subscriber to three identification codes and an unlimited number of scans during the term of the subscription.

2. Additional Identification Codes

Subscribers to the Silver, Gold, and Platinum subscription levels can license additional identification codes for $500 for 3-month intervals or until the expiration of the underlying subscription, whichever occurs first.

The additional identification codes are valid for only 3 months or to the end of the subscription period, whichever occurs first. At the renewal time of the underlying subscription, the same additional identification codes previously licensed may also be renewed at the subscriber's option.

Subscribers may, at their option, also license up to four 3-month periods at one time for the same additional identification codes if those 3-month periods are within the underlying subscription period.

3. Additional Scans

Subscribers to the Silver and Gold subscription levels, which both have specific limits to the numbers of recorded and reported scans as part of the subscription, can also license additional scans at any time before the expiration of the underlying subscription. The blocks of additional scans are usable until the subscription period ends, however long that period. Additional blocks of scans are available as follows:

- Silver subscription level, in blocks of 2 million scans at $500.
- Gold subscription level, in blocks of 6 million scans for $750.

4. Subscription Upgrade

A Gold subscription level can also be upgraded to a Platinum subscription level any time before the expiration of the Gold subscription with the payment of the difference in the subscription fees of $5,500. Upgrading a subscription from the Gold level to the Platinum level does not extend the term of the initial subscription.

B. Service Background and Development

1. Developmental Stages

The concept and initial development of Confirm came about seven years ago and, over the course of those years, progressed through three sequential stages: (1) Initial concept, (2) pilot program, and (3) production system launch.

2. Stage One: Initial Concept

Stage one emerged in 1995 when the concept of Confirm was envisioned as a way to provide mailers with near real-time information about the movement of automation-compatible mailpieces in the Postal Service mailstream. The Postal Service decided to build such a tracking system around PLANET Code barcode technology, which had been developed and refined earlier by the Postal Service Engineering Department.

This barcode technology was considered both an effective and an expedient way to meet mailer and Postal Service requirements for these reasons:

- The technology would require minimal research and testing because it was a fully developed and validated technology.
- The technology would require minimal effort and expense for mailers to implement within the current mailing environment.
- The technology would require minimal effort and disruption for the Postal Service to modify its existing postal processing infrastructure, which already supported the similar POSTNET barcode used for delivery address barcoding.

3. Stage Two: Pilot Program

Stage two came in 1998 when the Postal Service inaugurated a limited pilot program for Confirm that permitted a small number of participating mailers to use the service without charge while it was under development. The Postal Service established a prototype system in Wilkes-Barre, Pennsylvania, to collect Confirm data from major processing facilities and then transmit data files to participating mailers via an automated FTP process. Later that same year, the Postal Service created a Web site that allowed participating mailers to view and download small amounts of data.

By 2000, however, the demand for this Web site outgrew its capacity. In response, the Postal Service moved the system to its data site in Raleigh, North Carolina, and implemented the first major system upgrade. At the same time, the Postal Service expanded customer service at its National Customer Support Center in Memphis, Tennessee.

4. Stage Three: Production System Launch

Stage three came on October 1, 2001, when the Postal Service launched the Confirm Production System with a redesign of the system itself and a transfer of its operations to the postal data site in Eagan, Minnesota. By using the superior technological capabilities at that site, the Postal Service was able to make many new system improvements to Confirm including the following:

- Near real-time access to Confirm data on the Web site.
- Expanded PLANET Code functionality.

• Verification of mail induction times.

• Dedicated customer support.

Stage three was also extremely important because it demonstrated the commitment of the Postal Service to develop activity-based costs for the program. Such a costing methodology helps determine the level of ongoing infrastructure maintenance and long-term customer support for Confirm.

C. Product Uses

1. Strategic Alignment of Business Processes

Confirm represents part of an overall integrated strategy of the Postal Service to provide greater added value to postal services and products for mailers and their customers. In keeping with this strategy, information from Confirm can give participating mailers—whether actual subscribers or mailers contracting with third-party vendors that are subscribers—new opportunities to manage and, in some cases, improve their mailing operations. Moreover, information from Confirm can help participating mailers modernize business practices, enhance decision-making, and improve related activities such as inventory control, invoicing, and remittance processing.

With information obtained from Confirm, mailers participating in the service can align various internal business functions with the appropriate resources based on the actual processing and expected delivery or return of mail. At the same time, information from Confirm allows participating mailers to strengthen and enhance current long-term customer relationships as well as to initiate and build new ones.

The potential for participating mailers and the Postal Service to manage business practices is built on straightforward information technology that can report to participating mailers when their outgoing mail has neared delivery to their customers or, in reverse, when incoming customer-mailed reply pieces have entered the mailstream for return to the participating Confirm mailers.

2. Service Applications

As a result of this possible two-way flow of outgoing mail and incoming reply mail, Confirm has been developed with two distinct service applications:

• Destination Confirm for outgoing mail such as invoices, solicitations, credit cards, and statements of account.

• Origin Confirm for incoming reply mail such as payments, orders, and responses to solicitations.

Because of these two service applications, Confirm can meet the needs of a variety of mailers, including large-volume mailers that are direct subscribers to the service as well as small-volume mailers that are not direct subscribers but can benefit from presort houses and other third-party providers that do subscribe to the service.

D. Product Technology

1. Barcoding

To generate optimal Confirm information, two distinct barcodes are needed. One is a POSTNET barcode that identifies the ZIP Code, ZIP+4 code, or delivery point code corresponding to the delivery address; the other, a PLANET Code barcode that contains specific data relating to the participating subscriber and type of mailpiece.

This resulting combination of POSTNET and PLANET Code barcodes can, in certain cases, be used to identify and distinguish specific letter-size and flat-size automation-compatible mailpieces processed and scanned on Postal Service automation equipment.

In some cases, however, a PLANET Code barcode alone can provide some useful information to the subscriber. Because Postal Service letter-sorting and flat-sorting machines can read both POSTNET and PLANET barcodes in one pass, there is no adverse impact on mail processing throughput.

2. Confirm Data

Confirm scan-data generated from a mailpiece at a given mail processing operation will consist of a five-digit ZIP Code representing the facility processing the piece, a Postal Service operation number, processing date and time, and the numeric equivalents of the POSTNET barcode and the PLANET Code barcode.

Captured and recorded data are transmitted to a central Postal Service computer server and provided to the mailer electronically in near real-time, either through the Confirm Web site or directly to the mailer's computer.

Not every scan on automated processing equipment, however, necessarily equates into a Confirm data record. Other conditions must be satisfied such as the validity or readability of identification codes in the PLANET Code barcodes.

3. PLANET Code Structure

The structure of the PLANET Code is similar to the POSTNET delivery point code. Subscribers can, however, choose whether to use a 12-digit or a 14-digit version of the PLANET Code. In terms of structure, the PLANET Code barcode currently consists of 12 or 14 digits, each represented by a combination of tall and short bars. The PLANET Code barcode symbology for each digit is therefore the inverse of each corresponding POSTNET Code digit.

For the POSTNET barcode, each of the ten digits from 0 to 9 contains a unique combination of two tall and three short bars. For the PLANET Code barcode, on the other hand, the same ten digits from 0 to 9 contain three tall and two short bars that form a reverse image of each POSTNET digit. For example, the POSTNET barcode representation for the digit zero is, from left to right, two tall bars followed by three short bars. The PLANET Code barcode for the same digit is two short bars followed by three tall bars.

The structure for the PLANET Code provides information that is unique to the participating subscriber and the mailpiece as follows:

• Digits 1 and 2. Starting from the left, the first digit of the PLANET Code represents Confirm service type—either Destination Confirm or Origin Confirm—and the second digit represents the class and shape of mail (for example, ID 40 signifies Destination Confirm for First-Class Mail letters).

• Digits 3 through 11 (or 3 through 13). The current structure of the next nine digits (or eleven digits for the expanded 14-digit PLANET Code) differs for Destination Confirm and Origin Confirm. For Destination Confirm, these digits include a five-digit ID Code assigned by the Postal Service plus four additional digits (or six for the 14-digit PLANET Code) for the mailer's use. For Origin Confirm, mailers use all nine of the remaining digits to identify either the mailpiece or the reply customer (the sender of the reply piece) or a combination of both the specific mailpiece and the reply customer. The specific POSTNET Code on the Origin Confirm piece enables the Postal Service to identify the Confirm subscriber.

• Digit 12 (or 14). For both the Destination Confirm and Origin Confirm service applications, the last digit (the twelfth digit or, if the longer 14-digit PLANET Code, the fourteenth digit) is always a check-sum digit to help mail processing equipment detect possible coding errors.

4. Data Records

The data records for each properly scanned mailpiece are compiled for importing into common database software. Depending on the subscriber's request, the Postal Service can automatically transmit the file containing the data records to the subscriber via File Transfer Protocol (FTP) at times designated by the subscriber.

The Postal Service offers an alternative to automatic transmission by posting the data records to the Postal Service Confirm Web site. A subscriber can then view and download the data records for up to 15 days.

E. Advance Shipping Notice

Destination Confirm mail requires the electronic submission of an Advance Shipping Notice (ASN) in a specific file format prior to or at the time of the mailing. ASN data include specific mailer-generated information about each Destination Confirm mailing, such as drop location, drop date, and volume.

That data can be used to link Confirm scan data captured during mail processing with the ASN mailing data. This linkage can, in turn, serve as an objective means to track the movement of specific mail at its entry point into the mailstream and at other subsequent points before delivery.

In addition to providing an electronic ASN file for each mailing, the mailer must print an associated ASN Shipment ID barcode on the documentation accompanying the mailing. This barcode is configured as a Uniform Symbology Specification (USS) Code 128 barcode, similar to the Postal Service Delivery Confirmation barcode. This ASN Shipment ID barcode ties the data contained in the uploaded ASN file with possibly thousands of properly prepared Confirm pieces in the associated mailing.

Postal Service personnel scan the ASN Shipment ID barcode using Delivery Confirmation scanners at the time of induction. This entry scan ''starts the clock'' for the Destination Confirm mailing and provides a base point for tracking the processing throughput used for the mail. At the same time, the participating subscriber receives an automatic electronic notification of where and when the subscriber's mail was inducted into the Postal Service.

F. Application Steps for Using Confirm

A mailer seeking to become a subscriber of Confirm must complete and submit an online or hardcopy application form. New subscribers entering the program must first demonstrate the capability of generating compliant PLANET Code barcodes by producing and submitting sample mailpieces to the Postal Service.

Subscribers must also submit samples of the Advance Shipping Notice (ASN) Shipment ID barcode that would be scanned by the Postal Service at the time the corresponding mail is entered into the mailstream. After approving the mailpieces and barcodes and receiving the applicable subscription payment, the Postal Service establishes the subscriber's Confirm account so that the subscriber can begin receiving Confirm data files either from the special Confirm Web site or directly by FTP.

After processing the application, the Postal Service assigns the new subscriber a unique identification code. To assist new subscribers in the application process and to resolve technical issues, the Postal Service provides ongoing customer support.

G. Goals of Confirm

Confirm has two major goals. First, information from the service can help mailers improve their business processes and enhance customer relationships. Second, the same information can help the Postal Service improve customer service and operational efficiency. As such, this new service will support the strategic goal of the Postal Service to add greater value to current postal products and services and to expand the combinations of options that can meet the evolving business requirements of mailers and their customers.

List of Subjects in 39 CFR Part 111

Administrative Practice and Procedure, Postal Service.

The Postal Service, which is exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), adopts, for the reasons discussed above, the following amendments to the Domestic Mail Manual (DMM), which is incorporated by reference in the Code of Federal Regulations (CFR). See 39 CFR part 111.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend Domestic Mail Manual (DMM) as set forth below:

Domestic Mail Manual (DMM)

R Rates and Fees

* * * * *

R900 Services

* * * * *

[Amend R900 by redesignating current 9.0 through 26.0 as 10.0 through 27.0, respectively, and adding new 9.0 to read as follows:]

9.0 CONFIRM (S941)

Fee, in addition to postage and other fees:

Subscription level	Subscription fee and term	Additional ID code fee and term	Additional scans fee and number
Silver	$ 2,000, 3 months	$500 each, 3 months	$500, block of 2 million scans.
Gold	4,500, 12 months	500 each, 3 months	750, block of 6 million scans.
Platinum	10,000, 12 months	500 each, 3 months	N/A

* * * * *

S Special Postal Services

* * * * *

[Amend module S by adding new S940 and S941 to read as follows:]

S940 Mailpiece Information

S941 Confirm

1.0 BASIC INFORMATION

1.1 Description

Confirm is a service that provides an authorized subscriber with data electronically collected from the optical scanning of specially barcoded mailpieces as they pass through certain automated mail processing operations. Scanned data can include the postal facility where such pieces are processed, the postal operation used to process the pieces, the date and time when the pieces are processed, and the numeric equivalent of two barcodes that help to identify the specific pieces. Any piece intended to generate scanned data must meet the appropriate physical characteristics and standards in S941, although not every properly prepared piece is guaranteed such data or complete data.

1.2 Available Service and Handling

Confirm is available only to authorized subscribers as described in 1.3. The service is associated with the service applications described in 1.6 and subscription levels described in 1.7. Confirm may be used for one or more pieces in a mailing. Mail prepared for Confirm is dispatched and handled in transit as ordinary mail unless

combined with a service available for the class of mail and rate claimed that requires different handling.

1.3 Authorization

Confirm requires USPS authorization after applicable fees are paid and technical requirements for certification are met. For certification, a mailer must submit for evaluation and approval mailpieces bearing both PLANET Code barcodes and POSTNET barcodes to the National Customer Support Center (see G043 for address). Certification also includes, if applicable, evaluation and approval of the electronic format and uploading of the Advance Shipping Notice (ASN) file and the associated shipment identification barcode printed on required documentation accompanying mailings. Confirm may be used only after authorization is received, and information generated from the use of the service is provided only if the standards for participation are met.

1.4 Availability

Confirm is available to authorized subscribers for tracking automation-compatible letter-size or flat-size mail in applicable categories of the following classes of mail:

a. First-Class Mail (including Priority Mail).
b. Periodicals.
c. Standard Mail.
d. Package Services.

1.5 Additional Services

Confirm does not preclude or require the use of any special service available for the class of mail and rate claimed.

1.6 Service Applications

The following two service applications are available:

a. Origin Confirm for incoming mail. This use notifies the subscribing mailer of various movements of individual reply pieces, such as courtesy reply or business reply mail being returned by customers, before delivery to the Confirm subscriber.

b. Destination Confirm for outgoing mail. This use notifies the subscribing mailer of various movements of individual pieces, such as letter-size or flat-size pieces in a specific mailing, from the entry of the mailing to final automated processing steps of the pieces before delivery to the destination address.

1.7 Subscription Levels

Confirm is available in three distinct subscription levels as defined below, and a mailer may subscribe to one or more of these levels at the same time, at different times, or at overlapping times:

a. *Silver Subscription.* The Silver subscription level has a term of 3 consecutive months, includes one five-digit identification code assigned by the USPS, and provides up to 15 million scans. A mailer subscribing to this level may also:

(1) License additional identification codes for a term of 3 consecutive months or until the expiration of the underlying subscription, whichever occurs first.

(2) License additional scans in blocks of 2 million scans at any time before the underlying subscription expires. Unused scans expire at the end of the subscription term.

b. *Gold Subscription.* The Gold subscription level has a term of 12 consecutive months, includes one five-digit identification code assigned by the USPS, and provides up to 50 million scans. A mailer subscribing to this level may also:

(1) License additional identification codes for a term of 3 consecutive months or until the expiration of the underlying subscription, whichever occurs first.

(2) License additional scans in blocks of 6 million scans at any time before the underlying subscription expires. Unused scans expire at the end of the subscription term.

(3) Raise the subscription level to a Platinum subscription level at any time before the expiration of the Gold subscription by paying the difference of the respective subscription fees. This change in service level does not extend the term of the underlying initial subscription.

c. *Platinum Subscription.* The Platinum subscription level has a term of 12 consecutive months, includes three five-digit identification numbers assigned by the USPS, and provides an unlimited number of scans. A mailer subscribing to this level may also license additional identification codes for a term of 3 consecutive months or until the expiration of the underlying subscription, whichever occurs first.

1.8 Fees and Postage

The applicable Confirm® subscription fees as defined in 1.7 and shown in R900 must be paid in advance. These subscription fees are separate from the postage and any other applicable fees required for the piece being scanned under this service.

1.9 Deposit

The class of mail and rate claimed and the postage payment method used determine the point of deposit or entry.

2.0 BARCODES

2.1 General Barcode Requirement

At the time of mailing, each piece in a mailing that is intended to generate Confirm information must bear a PLANET Code® barcode. The USPS does not apply subscriber PLANET Code barcodes to mail after deposit by the subscriber. The use of POSTNET barcodes, which must meet the applicable specifications in C840, is as follows:

a. Origin Confirm pieces must bear both a PLANET Code barcode and a POSTNET barcode at the time of mailing. For business reply mail, the POSTNET barcode must correspond to the subscriber's business reply mail ZIP+4 codes assigned by the USPS under S922. For all other reply mail, the POSTNET barcode must correspond to the appropriate 5-digit ZIP Code, ZIP+4 code, or delivery point code for the delivery address.

b. Destination Confirm pieces must bear a PLANET Code barcode and, if required by the rate claimed at the time of mailing, an appropriate POSTNET barcode that corresponds to the delivery address. If a POSTNET barcode is not required by the rate claimed, the mailer has the option to apply the POSTNET barcode to such pieces for optimal Confirm information if the barcode correctly corresponds to the delivery address.

2.2 POSTNET Barcode

The type of POSTNET barcode (e.g., ZIP+4 barcode or delivery point barcode) and the placement of the barcode on a Confirm piece must meet the standards for the rate claimed. If two POSTNET barcodes are applied to the same piece, they must meet these standards:

a. Only one POSTNET barcode may be used in the address block as provided in 2.6.

b. The second POSTNET barcode must be placed outside the address block in a position meeting the applicable standards in C840 for letter-size mail or flat-size mail.

2.3 PLANET Code Barcode Use

Only one PLANET Code barcode may appear on a Confirm piece. For letter-size mail, the PLANET Code barcode may be placed in any position permitted in C840 for a POSTNET barcode except the lower right corner barcode clear zone. For flat-size mail, the PLANET Code barcode may appear in any position of the piece permitted for a POSTNET barcode in C840. Any PLANET Code barcode printed on mail for Confirm information must:

a. Be generated by the method used to receive USPS barcode certification during the application process in 1.3.

b. Meet the barcode specifications in 2.4.

c. Meet the format specifications in 2.5.

2.4 PLANET Code Barcode Specifications

The PLANET Code barcode symbology, which is the inverse of the POSTNET barcode symbology, uses a unique combination of three tall and two short bars to define each digit from 0 to 9. PLANET Code barcodes must meet the same dimensional specifications (including pitch, tilt, and baseline positioning) and print specifications (including reflectance) as required in C840 for POSTNET barcodes and in USPS Publication 197, *Customer Guide to Confirm Service.* Publication 197 is available from the National Customer Support Center (*see* G043 for address).

2.5 PLANET Code Barcode Format

PLANET Code barcodes must meet the following format standards required in USPS Publication 197 for service type:

a. Origin Confirm mailpieces (incoming reply mail) require these data fields in the following order from left to right:

(1) Mailpiece type identification: two digits; identifies type of reply mail (courtesy reply mail, business reply mail (BRM), or Qualified BRM) and physical characteristic of piece (letter, card, or flat); defined by USPS.

(2) Customer identification: nine or eleven digits; identifies mailpiece; defined by subscriber.

(3) Check digit: one digit; defined as the number which, when added to the sum of the other digits in the barcode, results in a total that is a multiple of 10.

b. Destination Confirm mailpieces (outgoing mail) require these data fields in the following order from left to right:

(1) Mailpiece type identification: two digits; identifies class of mail and physical characteristic of piece (letter, card, or flat); defined by USPS.

(2) Identification code: five digits; identifies mailer; assigned by USPS.

(3) Mailing: four (or six) digits; identifies specific mailing; defined by subscriber.

(4) Check digit: one digit; defined as the number which, when added to the sum of the other digits in the barcode, results in a total that is a multiple of 10.

2.6 Address Block Barcoding

If both a PLANET Code barcode and a POSTNET barcode are used as part of the delivery address block, the following standards must be met:

a. One barcode must placed in the upper part of the address block in one of two positions:

(1) Between the top address line (the first line of the delivery address block usually containing the recipient's name or attention line) and any keyline, optional endorsement line, or carrier route information line directly above the top address line.

(2) Directly above any keyline, optional endorsement line, or carrier route information line that is directly above the top address line.

b. The other barcode must always be placed directly below the bottom address line (the city, state, and ZIP Code line).

c. Both barcodes must maintain a minimum clearance of 1/25 inch directly above and below the barcodes.

d. The entire address block must be placed on the piece under the applicable standards in C840. The barcodes and address block, along with any keyline, optional endorsement line, or carrier route information line, must maintain the other applicable minimum clearances under C840, including clearances for inserts in window envelopes.

2.7 Reply Mail Barcodes

Reply pieces prepared for the Origin Confirm® service application under 1.6 must meet any applicable format and barcode standards as follows:

a. For business reply mail (BRM), S922.

b. For Qualified BRM, S922.

c. For courtesy reply mail (CRM), C100.

3.0 ADVANCE SHIPPING NOTICE

3.1 Purpose

Every mailing for which Destination Confirm information is desired requires the electronic submission of an Advanced Shipping Notice (ASN), in a specific file format, before or at the time of the mailing. This electronic notice enables the USPS to match mailing data provided by the mailer with actual scans taken on Confirm pieces in the mailing and to generate various reports for analysis from the matched data. A test file transmission must be uploaded and approved before Confirm mailings may be made as provided in 1.3.

3.2 Data Format

The ASN data file is a single data file in comma delimited flat file format. Each record is made up of a single row of data consisting of 16 data elements (fields) as defined in Publication 197. ASN data include specific mailer-generated information about each Destination Confirm mailing, such as drop location, drop date, mailer identification, volume, presort level, and number of pieces bearing PLANET Code® barcodes.

3.3 Shipment ID Barcode

In addition to an electronic ASN transmission for each mailing, an ASN Shipment ID barcode (used as a shipment identification) must be printed on the documentation accompanying the mailing. This documentation is either Form 8125 for mail prepared as a plant-verified drop shipment or Form 3152–A for mail entered and verified at a business mail entry unit. The USPS scans the ASN Shipment ID barcode to ''start the clock'' for the Destination Confirm mailing and to provide the base point for recording the actual processing time used for the mail. ASN Shipment ID barcode symbology is USS Code 128 Subset B and must meet the technical specifications in Publication 197.

4.0 DELIVERY

Any mailpiece prepared for Confirm is delivered as ordinary mail unless combined with any available service subject to D042.

* * * * *

An appropriate amendment to 39 CFR 111.3 will be published to reflect these changes.

Neva Watson,

Attorney, Legislative.

[FR Doc. 02–20730 Filed 8–14–02; 8:45 am]

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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

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